Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1994

WILLIAM SNEED,

Petitioner,

v.

HELEN BROOKS, Individually and as Administratrix for the Estate of JACQUES Q. BROOKS, Deceased,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether disputed issues of material fact prevent the determination of whether or not Petitioner is entitled to qualified immunity.

PARTIES TO THE PROCEEDING

HELEN BROOKS, Individually and as
Administratrix for the Estate of
JACQUES Q. BROOKS, Deceased,

Respondent,

vs.

WILLIAM SNEED,

Petitioner.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioner, William G. Sneed, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Sixth Circuit that was entered in this cause on December 5, 1995.

OPINION BELOW

The United States District Court for the Middle District of Tennessee denied Petitioner's motion for summary judgment on the basis of qualified immunity on August 24, 1993. The district court held that the subjective fear of Petitioner should be considered in assessing the reasonableness of his response to the decedent. (App. 15) The court also said that disputes of material facts prevented the grant of qualified immunity. (App. 5) Petitioner's motion for reconsideration, challenging both the failure of the court to utilize the objective standard of review and the failure to use admissions and testimony in the record to resolve the alleged disputes of fact, was denied on September 14, 1993.

The United States Court of Appeals for the Sixth Circuit affirmed the decision of the district court on December 5, 1994, by per curiam opinion. It admonished the district court for the use of a subjective qualified immunity analysis, but then proceeded to characterize the objective reasonableness of Petitioner's use of deadly force as a factual issue. (App. 5) The appellate court also

found that factual disputes prevented the determination of the availability of qualified immunity, and again failed to resolve the disputes by use of the admissions and testimony on those matters. (App. 6) A petition for rehearing, including a suggestion that rehearing be en banc, was denied on January 19, 1995. (App. 7-8)

JURISDICTION

The order affirming the denial of qualified immunity that is sought to be reviewed was entered on December 5, 1994. The order denying Petitioner's motion for rehearing was entered on January 19, 1995. Accordingly, this Petition is timely filed within 90 days of the date of the last decision. Sup. Ct. R. 13.1; 28 U.S.C. Section 2101(e). The statutory provision that confers on the Court jurisdiction to review the judgment in question is 28 U.S.C. Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The statutory and constitutional provisions involved in this cause include 42 U.S.C. Section 1983, pursuant to which this lawsuit was filed. It states:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the

> Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Also involved is the Fourth Amendment to the Constitution of the United States, which provides the rights that Respondent claims were violated by the shooting of the decedent:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Also involved is Federal Rule of Evidence 801, as Petitioner maintains that admissions by the Respondent or on her behalf resolve disputes of fact that the courts below claim to preclude the grant of qualified immunity to Petitioner. The Rule provides:

> The following definitions apply under this article:
>
> (a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.
>
> (b) Declarant. A "declarant" is a person who makes a statement.
>
> (c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements which are not hearsay. A statement is not hearsay if –

(1) Prior inconsistent statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (C) one of identification of a person made after perceiving the person; or

(2) Admission by party-opponent. The statement is offered against a party and is (A) the party's own statement in either an individual or a representative capacity or (B) a statement of which the party has manifested an adoption or belief in its truth, or (C) a statement by a person authorized by the party to make a statement concerning the subject, or (D) a statement by a party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

Finally, Federal Rule of Civil Procedure 7 is also involved:

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-

claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

(b) Motions and Other Papers.

(1) An application to the court for an order shall be by motion which, unless made during a hearing or a trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

(2) The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11.

(c) Demurrers, Pleas, Etc., Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

STATEMENT OF THE CASE

Respondent Helen Brooks filed this cause on October 19, 1990, as the mother of, and as administratrix of the estate of, Jacques Brooks. (App. 26) Named as defendants were Petitioner, who is police officer William G. Sneed,

and his employer, The Metropolitan Government of Nashville and Davidson County (hereinafter "Metro"). (App. 26) The causes of action presented were deprivation of Jacques Brooks' Fourth Amendment rights of due process and freedom from unreasonable seizures, pursuant to 42 U.S.C. Section 1983, and a number of state law tort claims. (App. 33-48)

Jurisdiction was based on 28 U.S.C. Sections 1331 and 1343. In the court of appeals, jurisdiction was based on 28 U.S.C. Sections 1291 and 1292.

On March 13, 1990, Jacques Brooks was shot and killed by Petitioner, after she approached him with a ten and one half inch knife. (App. 27) Petitioner had answered a call to intervene in a domestic dispute between Brooks and her uncle, Freddie Swope. (App. 27, 28)

Mr. Swope testified, and three other family members confirmed, that Mr. Swope had disarmed Brooks of one knife in the kitchen. (App. 64, 68-69, 81-82, 98-99, 101, 113-14, 166-67) She then rearmed herself with the ten and one half inch knife, and was observed by other family members pursuing Swope through and outside of the house with it. (App. 116-21, 141-42, 144-51, 171-72)

In the complaint, Respondent avers that Brooks was armed with a knife and agitated when she approached Petitioner, who was seated in his patrol car, and that

> [d]uring the course of the[ir] conversation . . . , JACKIE BROOKS was standing immediately next to [Petitioner's] patrol car, with her right side facing his patrol car and the knife in her left hand at her left side. . . . [S]he advised the

> [Petitioner] that "I'm gonna kill him", . . . which she repeated several times.

(App. 27, 28, 30) The car window was partially open. (App. 28, 265-66) Brooks' two nieces heard Petitioner tell Brooks that she was not going to kill anybody, and also saw Brooks turn towards Petitioner and pass the knife from hand to hand, in the same manner as described by him. (App. 125-26, 153, 158) Petitioner testified that Brooks then swore at him and raised the knife, in her left hand, over her head to stab him. (App. 261-62) Petitioner then fired five shots, within two seconds. (App. 262)

According to the medical examiner, Brooks' wounds correspond to Petitioner's description of her position when he fired. (App. 254, 255) Also, each separate shot was a fatal wound in and of itself. (App. 255, 257-58)

Despite the admissions in the complaint that she had the second knife (App. 28), Swope claimed that he never saw it (App. 83, 104, 111), even when Brooks was chasing him through the house and out into the yard (App. 83, 88, 103-04, 106), and that he did not see Brooks raise a knife or make other movements toward Petitioner. (App. 88, 106) Swope could not recall if he had looked away from Petitioner and Brooks during their exchange. (App. 106)

Respondent's expert witness David K. Wheaton comes right out and states that Petitioner was placed in great bodily harm by Brooks. (App. 205, 209) Another of Respondent's experts, Phillip L. Davidson, only challenges as unjustified the last three of the five shots that were fired. (App. 213) Respondent's third expert, Dennis Powell, merely opines that the use of deadly force was excessive because Petitioner did not attempt to control

the situation with lesser intrusive alternatives. (App. 216-19) Similar to Davidson, Powell does not criticize the firing of the first shot, only the subsequent rounds. (App. 216)

Petitioner's expert witnesses, Mr. James F. Fyfe, Ph.D., Mr. David Grossi, and Lt. Kenneth Pence, all state that Petitioner's use of deadly force was reasonable under the circumstances, and necessary for self-defense. (App. 237-43, 245-48, 250-52) Respondent's expert David Wheaton specifically agrees (App. 205) with the testimony of Fyfe, which states in part:

> Once within arm's reach of him, . . . Jacques Q. Brooks, surprised Officer Sneed by producing a large knife, waving it threateningly, and refusing to drop it or stop approaching Sneed upon Sneed's requests and commands. . . . Ms. Brooks produced a knife almost as soon as Officer Sneed encountered her, raised it and approached him threateningly. . . . In this case, there were reasonably available to Officer Sneed no means of self-defense short of deadly force . . . . Based on the facts and circumstances of this event, it is my opinion that Officer Sneed was *authorized to use deadly force in self defense*, under both generally accepted United States police custom and practice and the policies of the Metropolitan Police Department, as well as the parameters of prevailing case law, particularly the *Garner* case.

(App. 238-42) (emphasis in original), and of Grossi, who states:

> Any reasonable experienced police officer would have perceived her demeanor, her oral threats to kill "him", her state of agitation, her

> refusal to drop the knife as a threat to his or her safety. . . . [I]t is apparent that deadly force was the only option available to Petitioner Sneed. Any other non-lethal force options would have been impossible to employ or ineffective in stopping the threat. . . . Upon presentation of the knife by Ms. Brooks in the fashion described, any reasonably prudent officer would resort to deadly force to terminate the threat.

(App. 246-48)

REASONS FOR GRANTING THE WRIT

THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS BY IGNORING THIS COURT'S DECISIONS ON THE STANDARD TO BE APPLIED TO SUMMARY JUDGMENT MOTIONS MADE ON THE GROUNDS OF QUALIFIED IMMUNITY AND BY REFUSING TO DETERMINE WHETHER PETITIONER IS ENTITLED TO THAT DEFENSE BASED ON THE UNDISPUTED FACTS, WHICH CLEARLY SUPPORT PETITIONER'S CLAIM UNDER THE PROPER ANALYSIS.

A. The Sixth Circuit Avoids the Merits of Petitioner's Qualified Immunity Defense by Turning the Issue of the Reasonableness of His Actions from a Question of Law, as Previously Directed by This Court, Into a Question of Fact.

The United States Court of Appeals for the Sixth Circuit refused to resolve Petitioner's claim of qualified immunity. Instead, it asserted that whether or not Petitioner acted reasonably in shooting the decedent was a

disputed material fact. (App. 2) In so ruling, the Sixth Circuit erred. It confused the qualified immunity standard (could a reasonable officer have believed that shooting the decedent was lawful under the circumstances, *Hunter v. Bryant*, 502 U.S. 224, 227-28 (1991)) with the standard that would be used to analyze a summary judgment motion made on the merits of the Respondent's Fourth Amendment claim, by making the question of the objective reasonableness of the Petitioner's use of force a question of fact. Qualified immunity analysis "should be based on the undisputed facts as revealed by the record and on the plaintiff's version of the facts where there are disputes." *In re City of Philadelphia Litigation*, D.C. Civil No. 85-2745, 1995 WL 88161 at *2 (3rd Cir. 1995); *Melo v. Hafer*, 13 F.3d 736, 745 (3d Cir. 1994).

By refusing to evaluate a claim of qualified immunity because there are factual disputes, the court misinterprets the basic purpose of qualified immunity. The purpose is "to spare individual officers the burdens and uncertainties of standing trial in those instances where their conduct would strike an objective observer as falling within the range of reasonable judgment." *Gooden v. Howard County*, 954 F.2d 960, 965 (4th Cir. 1992). For the purposes of a qualified immunity defense, an officer's reasonable perception of a situation must exist somewhere in a range of perceptions. *Id.* at 965. Such perceptions will "nearly always" differ for different witnesses. *Id.* This "inevitable confusion, however, need not signify a difference of triable fact." *Id.* Rather, "[w]hat matters is whether the [officer] acted reasonably upon the reports available to

[him] and [he] undertook an objectively reasonable investigation with respect to that information in light of the exigent circumstances [he] faced." *Id.*

The opinion below is in direct conflict with this Court's decisions in *Hunter v. Bryant*, 502 U.S. 224 (1991), and *Anderson v. Creighton*, 483 U.S. 635 (1987). In those cases, this Court made it very clear that in the qualified immunity evaluation, the question of reasonableness is a question of law for the court. *Hunter*, 502 U.S. at 228; *Creighton*, 483 U.S. at 641. In making the issue of the reasonableness of Petitioner's belief that it was lawful for him to shoot at Brooks a factual question, the Sixth Circuit committed precisely the same error as did the Ninth Circuit in *Hunter*[1] and the Eighth Circuit in *Creighton*.[2]

Nowhere is the error in the Sixth Circuit's analysis more apparent than where it declares that even if Brooks did raise the knife towards Petitioner, "it remains unclear if the facts giving rise to [Petitioner]'s fear were such that a reasonable officer could have, as a matter of law, found probable cause to believe that Jacques Brooks presented a serious threat of personal harm." (App. 5) Unclear to

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[1] In *Hunter*, the Ninth Circuit had treated as a question of fact the issue of whether a reasonable officer could have believed that he had probable cause to effect the arrest in question, and had held that summary judgment was appropriate only if there was only one reasonable conclusion that a jury could reach. *Hunter v. Bryant*, 502 U.S. 224, 228 (1991).

[2] In *Creighton*, the Eighth Circuit had held that unresolved factual disputes made it impossible to determine as a matter of law whether a warrantless search had been supported by probable cause and exigent circumstances. *Creighton v. St. Paul*, 766 F.2d 1269, 1272-76 (8th Cir. 1985).

whom? Certainly not law enforcement officers! When did it become clearly established law that a police officer may not employ deadly force to defend himself against a knife? "Detached reflection cannot be demanded in the presence of an uplifted knife." *Brown v. United States*, 256 U.S. 335, 343 (1921).

The lower court's statement further illustrates its confusion over the applicable standard, for

> [w]hile ordinarily a court grants summary judgment only if no reasonable jury could find for the non-moving party, a court grants summary judgment based on qualified immunity if a reasonable officer could find the defendant's actions justified. When reasonable minds could differ, in the typical summary judgment decision the balance tips in favor of the nonmovant while in the qualified immunity context, the balance favors the movant.

Maravilla v. United States, 867 F. Supp. 1363, 1379 (N.D. Ind. 1993), *quoting Ellis v. Wynalda*, 999 F.2d 243, 246 n.2 (7th Cir. 1993). As long as the facts can support a reasonable belief that the officer's conduct was lawful, he is entitled to qualified immunity. *Act Up!/Portland v. Bagley*, 988 F.2d 868, 873 (9th Cir. 1993). This Court requires only that a reasonable officer *could* have believed the threat existed; it does not require that the threat actually *did* exist, that the officer *must* have believed it existed, or that *all* officers would have perceived the same conduct as a threat. *See Hunter*, 502 U.S. at 227; *Malley v. Briggs*, 475 U.S. 335, 341 (1986) (qualified immunity available if reasonably competent officers could differ as to whether

action at issue should have been taken); *Mahoney v. Kersey*, 976 F.2d 1054, 1058 (7th Cir. 1992) (qualified immunity available when an officer mistakenly but reasonably believed that arrest was lawful); *Ricci v. Urso*, 974 F.2d 5, 7 (1st Cir. 1992) (defendant only required to show that reasonable officer *could* have believed that arrest was lawful); *Ellis v. Wynalda*, 999 F.2d 243, 246 n.2 (7th Cir. 1993) (qualified immunity gives officers "the benefit of the doubt" when the circumstances are such that reasonable officers could differ as to the lawfulness of the actions at issue); *Gooden v. Howard*, 954 F.2d 960, 965 (4th Cir. 1992) (en banc) (officer claiming qualified immunity is given benefit of the doubt); *Reese v. Anderson*, 926 F.2d 494, 500-01 (5th Cir. 1991) (qualified immunity available when officer incorrectly but reasonably believed that there was a threat of death or serious bodily injury); *Maravilla v. United States*, 867 F. Supp. 1363, 1379 (N.D. Ind. 1994) (qualified immunity gives officers "the benefit of the doubt" when the circumstances are such that reasonable officers could differ as to the lawfulness of the actions at issue); *Liebenstein v. Crowe*, 826 F. Supp. 1174, 1185 (E.D. Wis. 1992) (officer claiming qualified immunity is given benefit of the doubt).

This case is not the first post-*Hunter* decision in which the Sixth Circuit has made these errors. In *Washington v. Newsome*, 977 F.2d 991, 992-93 (6th Cir. 1992), *cert. denied*, 113 S. Ct. 1848 (1993), it was undisputed that two people in a car at a shopping center had just committed an armed robbery, that the passenger had a long gun (rifle or shotgun), that the victim and a witness immediately reported the incident to police officers at the center, that the officers responded in time to intercede in

a second armed robbery by the same perpetrators, that the passenger with the long gun pointed it at one of the officers, that all three officers then fired at the car, that the driver exited the car and ran, and that two of the officers shot the driver. While it properly recited the substantive law of qualified immunity, the court also declared that it "[could] not decide as a matter of law whether a reasonable officer could have believed his actions were lawful," on the basis that there was a factual dispute over the officer's information about whether the decedent was "probably armed." *Washington*, 977 F.2d at 995. As a result of the alleged material dispute, the court said, "reasonable *finders of fact* might disagree as to whether, at the time of the flight, an objective police officer *should* [not "could"!] have perceived [the fleeing perpetrator] as 'unarmed' or 'nondangerous.' " *Id.* at 995 (emphasis added). The Sixth Circuit had applied the analysis of a summary judgment motion on the merits of a Fourth Amendment excessive force claim, not the analysis of a summary judgment motion on the merits of a qualified immunity defense (i.e., whether a reasonable officer *could* have believed that the use of deadly force was reasonable under the circumstances).

The Second Circuit uses the same erroneous standard. In *Oliveira v. Mayer*, 23 F.3d 642, 649 (2d Cir. 1994), it actually held that "the District Court erred by not submitting the qualified immunity issue to the jury."

If qualified immunity is not available to the law enforcement officer who shoots an assailant armed with a ten inch knife or who shoots at a fleeing armed robbery suspect whose cohort aims a shotgun at the arresting officers, then to whom is qualified immunity available?

The Sixth Circuit clearly does not provide qualified immunity to "all but the plainly incompetent and those who knowingly violate the law." *Malley v. Briggs*, 475 U.S. at 341.

The flawed analysis of the qualified immunity defense to an excessive force claim will continue in the Sixth and Second Circuits until their error is corrected by this Court. And once a government official is subjected to the costs and intrusions of trial, he will have forever lost the protection that qualified immunity should have afforded him. *See Mitchell v. Forsyth*, 472 U.S. 511, 525-26 (1985). The errors in the analysis of Petitioner's qualified immunity defense are of proportions so significant as to merit this Court's time and attention to correct them.

B. Judicial and Evidentiary Admissions and Testimony in the Record Resolve All Material Disputes of Fact.

The Sixth Circuit stated that a decision on the availability of qualified immunity for Petitioner was precluded by disputes of material facts. Those disputed facts were identified as "whether Brooks possessed a knife, whether she raised a knife against [Petitioner], and whether [Petitioner] acted reasonably in shooting Brooks." (App. 5)

In declaring that material disputes prevented the determination of qualified immunity, the court of appeals ignored the evidentiary and judicial admissions and testimony in the record. It improperly used the allegation of factual disputes to avoid making the qualified immunity

determination. *In re City of Philadelphia Litigation*, D.C. Civil No. 85-2745, 1995 WL 88161 at *2 (3rd Cir. 1995); *Melo v. Hafer*, 13 F.3d 736, 745 (3d Cir. 1994); *Gooden v. Howard County*, 954 F.2d 960, 965 (4th Cir. 1992). The admissions and testimony resolve any material disputes.

Statements in a complaint against the pleader are conclusive judicial admissions that waive all controversy about the facts so admitted. *Ferguson v. Neighborhood Hous. Servs.*, 780 F.2d 549, 551 (6th Cir. 1986); *Morelock v. N.C.R. Corp.*, 586 F.2d 1096, 1107 (6th Cir. 1978), *cert. denied*, 441 U.S. 906 (1979); *Hillsdale County Nat'l Bank v. Uhle (In re Quality Redi-Mix)*, 10 B.R. 409, 412 (W.D. Mich. 1981); *Hall v. United States*, 314 F. Supp. 1135, 1137 n.3 (N.D. Cal. 1970).[3]

Respondent avers in the complaint that:

1) Brooks was agitated and armed with a knife when she approached Petitioner in his patrol car (App. 27, 28, 30);

2) as Petitioner and Brooks spoke, Brooks stood with her right side immediately next to the patrol car, the knife in her left hand at her left side (App. 30);

3) the patrol car window was partially open (App. 28); and,

4) Brooks repeatedly told Petitioner, " 'I'm gonna kill him.' " (App. 30)

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[3] Under federal law, a complaint is a pleading. Fed. R. Civ. P. 7(a).

Thus, it is judicially admitted that Brooks was armed with a knife when she confronted Petitioner, that she was standing right next to the open window of his patrol car when she confronted him, and that she made threats to "kill him" during the confrontation. (App. 27, 28, 30).

Testimony in the record also works to resolve the alleged material disputes. The statements of Respondent's experts are evidentiary admissions against her because they are the authorized statements of her agents, and they are statements in which she has manifested an adoption or belief in their truth (by filing them with the court). Fed. R. Evid. 801(d)(2)(B) & (C); *Williams v. Union Carbide Corp.*, 790 F.2d 552, 556 (6th Cir.), *cert. denied*, 479 U.S. 992 (1986); *Melton v. O.F. Shearer & Sons*, 436 F.2d 22 (6th Cir. 1970).[4] They are unrebutted evidentiary admissions. Of Respondent's three expert witnesses, David K. Wheaton readily admits that Petitioner was placed in fear of serious bodily injury by Brooks. (App. 209) Respondent's second expert, Phillip L. Davidson, does not dispute that Petitioner was presented with what *could* be perceived as a threat of serious bodily harm. In fact, Davidson challenges as excessive only the last three of the five shots that were fired (App. 213-14), and thus acknowledges that Petitioner was justified in firing at least the first two shots. As each shot was fatal in and of itself (App. 254-58), Brooks would have died even if only the first shot had been fired.

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[4] *Accord*: *Collins v. Wayne Corp.*, 621 F.2d 777 (5th Cir. 1980); *United States v. Lykes Bros. S.S. Co.*, 432 F.2d 1076 (5th Cir. 1970); *Brown & Root, Inc. v. American Home Assurance Co.*, 353 F.2d 113 (5th Cir. 1965), *cert. denied*, 384 U.S. 943 (1966).

> [I]f the last shot was intentional, and may seem to have been unnecessary when considered in cold blood, the defendant would not necessarily lose his immunity if it followed close upon the others, while the heat of the conflict was on, and if the defendant believed that he was fighting for his life.

Brown, 256 U.S. at 343. *See also Russo v. City of Cincinnati*, 953 F.2d 1036 (6th Cir. 1992) (court does not analyze the reasonableness of each individual bullet fired in a burst of bullets).

Respondent's third expert, Dennis Powell, also does not dispute that Petitioner was faced with a threat of serious bodily harm. (App. 215-20) Powell simply states that other officers may have responded in a manner different than did Petitioner (App. 215-20), a hypothesis that has no bearing whatsoever on whether Petitioner could have reasonably believed that he faced a deadly threat when he fired at Brooks. *See Malley v. Briggs*, 475 U.S. 335, 341 (1986) (qualified immunity is available if reasonably competent officers could differ as to whether the action at issue should have been taken). Powell further opined that the use of deadly force was excessive because Petitioner did not attempt to control the situation with lesser intrusive alternatives. (App. 216-20) However, the law does not require that an officer explore the possibility of lesser intrusive alternatives when he is faced with a deadly threat, *Plakas v. Drinski*, 19 F.3d 1143, 1148, 1149 (7th Cir.), *cert. denied*, 115 S. Ct. 81 (1994), and in fact prohibits any after the fact inquiry into their feasibility. *Graham v. Connor*, 490 U.S. 386, 396-97 (1989). Thus, all suppositions and opinions by Respondent's experts

regarding the number of appropriate shots, alternatives to the use of deadly force, and that not all officers may have perceived the threat as deadly, are irrelevant as a matter of law.

Nothing in the record contradicts Respondent's experts' testimony that Petitioner reasonably perceived Brooks' conduct as presenting a deadly threat. Petitioner's expert witnesses all state that Petitioner's use of deadly force was not only reasonable under the circumstances, but necessary for self-defense. (App. 238-42, 246-48) Consequently, there is *no* factual dispute about whether or not Petitioner's fear of death or serious bodily injury at the time of the encounter was objectively reasonable.

In addition to the experts, Respondent's family members provide valuable testimony. They testified that Petitioner told Brooks that she was not going to kill anybody, and that Brooks turned towards him and passed the knife from hand to hand in the manner described by Petitioner. (App. 30, 124-28, 134-35, 157-60, 167) These additional admissions are undisputed, and further establish the objective reasonableness of Petitioner's belief that Brooks presented a lethal threat.

C. Whether Brooks Raised the Knife Over Her Head Is Not Material.

Because the experts agree that Brooks presented a threat of serious bodily injury, any dispute over whether or not Brooks raised the knife over her head is *not* material. First, determination of that fact is not necessary

because of the admissions on the reasonableness of Petitioner's fear. Second, the whole of Brooks' behavior, not just raising the knife, comprised the deadly threat that the experts all concede existed.

The use of deadly force when an officer is presented with the threat of death or serious bodily injury is unquestionably lawful. *Tennessee v. Garner*, 471 U.S. 1, 11 (1985). Where deadly force is otherwise justified under the Constitution, there is no constitutional duty to use non-deadly alternatives, including retreat, first. *Plakas v. Drinski*, 19 F.3d 1143, 1148, 1149 (7th Cir. 1994). *See also Graham v. Connor*, 490 U.S. 386, 396-97 (1989) (analysis of the use of force from the vantage of hindsight is prohibited). Once it was established that Petitioner's fear of a deadly threat was reasonable, as is conceded by the experts, it is a foregone conclusion – as a matter of law – that it was lawful for him to use deadly force in defense of the threat.

CONCLUSION

The basic facts necessary to the evaluation of qualified immunity are not disputed. Brooks approached Petitioner's patrol car, agitated and armed with a knife. Petitioner was seated in the patrol car and his window was partially open. Standing right next to the patrol car, Respondent repeatedly asserted that she was going to "kill him," and passed her knife from hand to hand. The experts all agree that these facts are sufficiently threatening to cause a reasonable officer to fear serious bodily harm or death. Despite these undisputed facts, the Sixth

Circuit refused to determine whether Petitioner is entitled to qualified immunity.

In addition, the Sixth Circuit is not applying the correct analysis. Were the Court to analyze Petitioner's qualified immunity claim under the proper standard, it would find him entitled to the defense. To subject Petitioner to trial will deny him the protection that qualified immunity was specifically designed to provide. Accordingly, Petitioner respectfully prays that a writ of certiorari issue, and that this cause be reviewed.

Respectfully submitted,

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NOT FOR PUBLICATION

No. 93-6259

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

HELEN BROOKS, Individually and as Administratrix for the Estate of JACQUES Q. BROOKS, Deceased,

Plaintiff-Appellee,

v.

WILLIAM SNEED,

Defendant-Appellant,

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,

Defendant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

(Filed Dec. 5, 1994)

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced.

Decided and Filed ___

BEFORE: **SUHRHEINRICH, SILER,** and **BATCHELDER,** Circuit Judges.

PER CURIAM. Defendant William G. Sneed appeals the district court's order denying his motion for summary judgment on qualified immunity under 42 U.S.C. § 1983 and state law claims.

For the reasons state below, we affirm the decision of the district court.

I.

On March 13, 1990, Sneed, a Nashville police officer, answered a call to intervene in a domestic dispute between Jacques Q. Brooks and her uncle, Freddie Swope. Jacques Brooks, physically disabled and slightly retarded, was living with her mother, Plaintiff Helen Brooks, and Swope. While the seriousness of the altercation between Jacques Brooks and Swope is not clear, nevertheless Brooks pursued Swope with a ten-inch kitchen knife. Swope took the knife away from her. Jacques Brooks then called the police and requested assistance because she was having a fight with Swope.

When Officer Sneed arrived at the Brooks home, Jacques Brooks approached his squad car. The content of the verbal exchange between Sneed and Brooks is unclear. More importantly, there are disputed facts relating to whether Brooks possessed a knife, whether she raised a knife against Sneed, and whether Sneed acted reasonably in shooting Brooks. In any event, Sneed indisputably fired five shots from his pistol at Brooks and killed her.

Helen Brooks subsequently brought suit against Sneed and his employer, the Metropolitan Government of

Nashville and Davidson County. Brooks alleged that Sneed unlawfully deprived Jacques Brooks of her Fourth and Fourteenth Amendment rights and is thus liable under 42 U.S.C. § 1983. Brooks further alleged that the constitutional violations were caused by Metropolitan's inadequate training and supervision. Finally, Brooks alleged state law claims against Sneed for assault, battery, outrageous conduct, negligence, and gross negligence. On August 24, 1992, the district court denied the defendants' motions for summary judgment on the § 1983 claim, but granted their motion to dismiss the state law claims. Sneed appeals the denial of his motion for summary judgment on the § 1983 claim, asserting the doctrine of qualified immunity. *See Mitchell v. Forsyth*, 472 U.S. 511, 530 (1985).

II.

Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that no genuine issue of material fact exists and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). We review the denial of a motion for summary judgment under qualified immunity de novo. *See Yates v. Cleveland*, 941 F.2d 444, 446 (6th Cir. 1991). In regard to a summary judgment determination of qualified immunity, a plaintiff must pass two hurdles: "First, the allegations must state a claim of the violation of clearly established law. Second, the plaintiff must present evidence sufficient to create a genuine issue as to whether the defendant in fact committed the acts that violated the

law." *Adams v. Metiva*, 31 F.3d 375, 386 (6th Cir. 1994) (citations omitted).

Sneed argues that the district court should have dismissed Brooks' claim against him since his use of deadly force was reasonable under the circumstances. However, whether Sneed acted reasonably in using deadly force is not the issue of the present appeal. Rather, the issue is whether the district court properly denied Sneed's summary judgment motion on the issue of qualified immunity. After reviewing the record, we find that a genuine issue of material fact existed regarding Sneed's claim for qualified immunity and, therefore, the district court's decision was proper.

In deciding whether qualified immunity applies in this case, this court must determine whether, at the time of the alleged seizure, an objectively reasonable officer could have believed that the defendant officer's conduct was constitutional in light of the clearly established law and the information the officer possessed at the time the incident occurred. *Adams*, 31 F.3d at 387. The Fourth Amendment right to be free from unreasonable seizures, *California v. Hodari D.*, 499 U.S. 621, 624-25 (1991), and the use of excessive force, *Graham v. Connor*, 490 U.S. 386, 392-93 (1989), were clearly established. Thus, the issue is whether there is sufficient evidence indicating that Sneed acted in a manner that was objectively unreasonable in light of this clearly established right. Qualified immunity applies if a "reasonable police officer [would] have reasonably believed that [his conduct i]s lawful." *Johnson v. Estate of Laccheo*, 935 F.2d 109, 112 (6th Cir. 1991). Specifically, "[i]f a reasonable officer could have found probable cause to believe that [Jacques Brooks] presented a

serious threat of personal harm at the time that [Sneed] pulled the trigger, then as a matter of law, [Sneed] is entitled to qualified immunity." *Slattery v. Rizzo*, 939 F.2d 213, 216 (4th Cir. 1991).

The district court properly refused Sneed's motion for summary judgment because material factual disputes remain as to whether a reasonable officer would have had probable cause to believe that Jacques Brooks presented a serious threat of personal harm to Sneed when Sneed shot Brooks. Specifically, the parties dispute whether and to what extent Brooks threatened Sneed with the knife. Moreover, even if this court assumed that Brooks raised the knife toward Sneed, it remains unclear whether the facts giving rise to Sneed's fear were such that a reasonable officer could have, as a matter of law, found probable cause to believe that Jacques Brooks presented a serious threat of personal harm. For these reasons, the district court correctly determined that genuine issues of material fact remained regarding Sneed's claim of qualified immunity.

In so deciding, this court does not hold that Sneed is not entitled to summary judgment after discovery. Rather, we hold only that the district court correctly determined that Sneed was not entitled to summary judgment on the issue of qualified immunity under the facts most favorable to the plaintiff.

Finally, the district court indicated that Sneed's subjective intent was material to the issue of whether Sneed acted reasonably when he responded to Brooks with deadly force. This, however, is a misstatement of the law.

The test is not whether Sneed subjectively believed himself to be in danger of serious harm, but whether it was objectively reasonable for Sneed to react to Brooks with deadly force. *Adams*, 31 F.3d at 387; *Johnson*, 935 F.2d at 112. Upon remand, the district court should consider the case under this objective standard.

AFFIRMED.

No. 93-6259

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

HELEN BROOKS, INDIVIDUALLY AND AS ADMINISTRATRIX FOR ESTATE OF JACQUES Q. BROOKS, DECEASED, Plaintiff-Appellee, v. WILLIAM SNEED, Defendant-Appellant. THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, Defendant.	ORDER (Filed Jan. 19, 1995)

BEFORE: SUHRHEINRICH, SILER, and BATCHELDER, Circuit Judges.

The court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this court, and no judge of this court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the

petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Leonard Green, Clerk se

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES BROOKS (Deceased) & HELEN BROOKS, Individually and as Administratrix for the Estate of JACQUES BROOKS, Plaintiffs,	)	No. 3:90:-0917
v.	)	
WILLIAM SNEED,Individually and in His Official Capacity as a Police Officer & THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, Defendants.	)	

ORDER

For the reasons stated in the accompanying Memorandum, defendant Metro's summary judgment motion is DENIED with respect to the federal law claim and GRANTED with respect to the state law claim. Likewise, defendant Sneed's summary judgment motion is GRANTED with respect to the state law claim for negligence or gross negligence and DENIED with respect to all other claims.

In light of the defendants' indication that an immediate appeal of the denial of summary judgment on the qualified immunity issue will be taken, and in light of the fact that such appeal must be heard under *Mitchell v.*

Forsyth, 472 U.S. 511 (1985), the defendants' motion to continue the trial is GRANTED. The proceedings shall be stayed pending the outcome of any appeal taken.

It is so ORDERED.

/s/ T. Wiseman
Thomas A. Wiseman, Jr.
U.S. District Judge

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a),FRCP, on 8/24/93
By:_____

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES BROOKS (Deceased) & HELEN BROOKS, Individually and as Administratrix for the Estate of JACQUES BROOKS, Plaintiffs, v. WILLIAM SNEED,Individually and in His Official Capacity as a Police Officer & THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, Defendants.	)	No. 3:90:-0917

MEMORANDUM

Facts

This case involves a claim of excessive force by a police officer. There is no dispute that the officer in question, defendant William Sneed, shot and killed Jacques Brooks on the evening of March 13, 1990. The only disputes are whether Officer Sneed was justified in using the degree of force which he did that night and whether the policy or custom of the defendant Metropolitan Government with respect to the training and evaluation of its police officers was faulty and thus responsible for the harm that occurred that night. The Court must now decide whether these questions are genuine and thus should be decided by a jury, or whether the evidence put

forward to this point by the plaintiff, Ms. Helen Brooks, is so slight that the defendant is entitled to judgment as a matter of law.

The general facts of the case can be stated succinctly. Ms. Brooks was slightly retarded and physically disabled due to a diabetic coma in 1982, and was living with her mother, the plaintiff, at the time in question. Also staying in the plaintiff's home at the time was the decedent's uncle, Mr. Freddie Swopes. On the afternoon of the fateful day, Ms. Brooks and Mr. Swopes engaged in a squabble, and at one point in this exchange Ms. Brooks took up a knife and pursued Mr. Swopes. The actual seriousness of this altercation is not clear. Eventually, though, the police were notified and requested to intervene in this domestic dispute.

Officer Sneed answered the call and was the first of the police to arrive on the scene. As Officer Sneed pulled up to the Brooks' residence, Ms. Jacques Brooks was outside and approached Officer Sneed's car. The content of the verbal exchange between Ms. Brooks and Officer Sneed, as well as the physical nature of this interaction, are in dispute, but at some point Officer Sneed drew his semi-automatic pistol and shot five times, four bullets hitting Ms. Brooks and fatally wounding her.

Officer Sneed was not indicted for criminal charges, but Ms. Helen Brooks filed a civil suit alleging federal and state law violations against Officer Sneed and his employer, the Metropolitan Government of Nashville and Davidson County ("Metro"). Specifically, the plaintiff charges that Officer Sneed, acting under the color of state law, deprived her daughter of her Fourth and Fourteenth

Amendment rights and is thus liable for damages under 42 U.S.C. § 1983. Plaintiff also alleges under Tennessee law assault and battery, outrageous conduct, negligence, and gross negligence by Officer Sneed. Plaintiff alleges that inadequate training and supervision policies and customs by Metro allowed the constitutional violations in question, and thus liability under § 1983 should also lie against Metro. Recovery under Tennessee law on negligence or gross negligence is also sought against Metro. In sum plaintiff seeks $6 million in damages. Both defendants have filed summary judgment motions and now ask the court to dismiss.

Analysis

A. The Federal Claim against Sneed

The standards governing the decision on a motion for summary judgment are well-established. Summary judgment is appropriate only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 2552-53, 91 L. Ed. 2d 265 (1986); *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1476-80 (6th Cir. 1989). The party seeking summary judgment bears the initial burden of showing the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. Upon meeting this burden the burden shifts to the non-moving party, who cannot rest on its pleadings but must present some specific facts showing that there is a genuine issue for trial. *Id.* at 324. A dispute about a material fact is genuine within the meaning of Federal Rule of

Civil Procedure 66 only if "the evidence is such a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). "The mere existance of a scintilla of evidence in support of the plaintiff's position will be insufficient." *Id.* at 252. The court is to construe the evidence and all inferences to be drawn from it in the light most favorable to the nonmoving party. *Id.* at 255.

The Sixth Circuit has clearly set out the law governing an excessive force claim on summary judgment:

> To collect damages under § 1983, [the plaintiff] must show that [officer] violated [the decedent's] fourth amendment right to be free from unreasonable searches and seizures, which has been applied to states and municipalities by the fourteenth amendment. As the Supreme Court has stated, "*all* claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard, rather than under a 'substantive due process' approach. . . . Thus, to survive a motion for summary judgment, [Ms. Brooks] must designate specific facts demonstrating that Officer [Sneed] acted unreasonably in shooting her [daughter]."

Smith v. Freland, 954 F.2d 343, 345 (6th Cir. 1992) (quoting *Graham v. Connor*, 490 U.S. 386, 395 (1989)).

Factors relevant to the reasonableness of an officer's use of force are "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or other, and whether [the suspect] is

actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396. In assessing this reasonableness, a court should not substitute its unhurried judgment for that of the officer under stress. *See Id.* at 396-97. The court should also keep in mind, however, the special evidentiary problem that often arises in a deadly force case, namely, that the officer is the only surviving eyewitness to certain of the events in question. *See Scott v. Henrich*, 978 F.2d 481, 484 (9th Cir. 1992). Accordingly, "the court may not simply accept what may be a self-serving account [by the officer], but must exercise a fair degree of skepticism in determining whether the officer – as sole surviving witness and intensely interested party – is telling the truth." *Id.* All of the evidence in the record – the medical reports, expert testimony, any available physical evidence, etc. – must be scrupulously reviewed in such cases to overcome the special problems of evidence. *See id.*

The plaintiff asserts that Officer Sneed acted unreasonably (1) in shooting her daughter at all, as no clear threat existed and numerous easy alternatives to deadly force existed if an emergency situation was present, and (2) in shooting her daughter the number of times she was shot. The most fundamental dispute on the reasonableness issue, and it alone is sufficient to avoid summary judgment, is whether Officer Sneed actually felt that he was in immediate danger. The plaintiff has offered more than a scintilla of evidence that contradicts Officer Sneed's testimony that Ms. Brooks raised a knife to attack him. *Cf. Reese v. Anderson*, 926 F.2d 494, 499 (5th Cir. 1991) (characterizing a scintilla of evidence as opinions, bald allegations, and "sweeping conclusions," unlike the

observations of Freddie Swope as put forward here). This issue presents a classic question for the jury, one of credibility: whose account is more veridical?

Other disputes exist on the reasonableness issue as well. The court's main question is whether the action taken by the police officer was reasonable, not whether some less intrusive alternative existed. *Illinois v. Lafayette*, 462 U.S. 640, 647 (1983). Nevertheless, at some point the existence of other, easily-accessed alternatives does become relevant to the reasonableness test. *Cf. Hopkins v. Avada*, 958 F.2d 881, 887 (9th Cir. 1992). The existence of less intrusive alternatives that could have been easily chosen in the heat of the moment are relevant to the question of whether an officer reasonably thought him- or herself to be in immediate danger. A genuine dispute exists here on this issue in two regards: first, did Officer Sneed have such alternatives to shooting available that a reasonable officer would have chosen one of these (e.g., baton protection, exit by foot or auto) instead of first firing a shot, and second, after the first shot was fired, did less intrusive alternatives to continuing to shoot exist such that a reasonable officer would have stopped shooting and taken one of these alternatives?

Finally, a genuine material issue exists regarding the question of whether Officer Sneed, even if he acted reasonably in first firing at Ms. Brooks, continued to act reasonably in continuing to fire. The medical and physical evidence is unclear as to whether Officer Sneed actually shot into the back of Ms. Brooks and as to whether he knew he was doing so (because of the "flashbulb effect" that supposedly took place in the cab of his car, temporarily blinding him). By his own testimony, however,

Officer Sneed states that he saw Ms. Brooks recoiling from him. Plaintiff has presented expert testimony questioning the reasonableness of the number of shots fired, to which the defendant has offered contradictory expert testimony. From this dueling expert testimony and from the uncertainties in the evidence as it now stands, it is clear a genuine dispute exists over when Officer Sneed saw Ms. Brooks recoiling and whether he reasonably could have and should have stopped firing at this point. Moreover, a dispute exists over whether this question is relevant at all, that is, was Ms. Brooks fatally wounded after the first shot?

Because on a summary judgment motion in an excessive force case, the inquiry on the merits is essentially identical to the inquiry into the applicability of the qualified immunity defense – both inquiries require a judgment of whether the officer acted reasonably, *see Malley v. Briggs*, 475 U.S. 335, 341 (1986); *Yates v. City of Cleveland*, 941 F.2d 444, 446-47 (6th Cir. 1991); *Hopkins*, 958 F.2d at 885 n.3 ("In Fourth Amendment unreasonable force cases, unlike in other cases, the qualified immunity inquiry is the same as the inquiry made on the merits.") – the court's above analysis on the merits answers the question of qualified immunity as well: summary judgment is inappropriate on qualified immunity grounds as there remains a dispute as to the reasonableness of the officer's actions. *See Heflin v. Stewart County*, 958 F.2d 709, 717 (6th Cir. 1992) ("If there is 'a factual dispute (*i.e.*, a genuine issue of material fact) involving the question on which immunity turns,' summary disposition is improper and the case must go to trial.").

In sum, several genuine disputes over material facts exist on the federal claim. Summary judgment will be denied defendant Sneed on this claim.

B. The State Claims Against Sneed

The issues in dispute outlined above are relevant to the plaintiff's state law claims as well. Indeed, the defendant's response to the assault and battery charge – that he acted in self-defense – essentially requires an inquiry like that under the § 1983 claim: did the officer have a reasonable belief he was in imminent danger? *See* Tenn. Code Ann. § 39-11-611. Furthermore, the sustainability of the outrageous conduct claim relies heavily on a determination of whether Officer Sneed acted reasonably. Certainly if he act reasonably, then his conduct would not be "outrageous" and of the nature not tolerated by civilized society, *Medlin v. Allied Inv. Co.*, 398 S.W.2d 270, 274 (1966). But if not, then perhaps his conduct rose to the level of "outrageous." Given the two-sided nature of the evidence as it now exists, this simply is a question for the jury, that body that is assigned the duty of being the conscience of the community within our judicial system.

Notwithstanding the fact that clearly a dispute exists over whether Officer Sneed acted grossly negligently, or simply negligently, the negligence and gross negligence claims should be dismissed as their resolution depends on the resolution of the like claims against Metro. *See* Tenn. Code Ann. 29-20-310. And since these claims against Metro must be dismissed so that a state court can first pass on them, *see Beddingfield v. City of Pulaski*, 66 F.

Supp. 1064, 1067 (M.D. Tenn. 1987),[1] these claims against Sneed will also be dismissed for judicial economy and comity reasons (i.e., the state may consider the state law claims against Sneed and Metro together and is in a better position to interpret the relevant law). *But cf. Timberlake by Timberlake v. Benton*, 786 F. Supp. 676, 696-97 (M.D. Tenn. 1992) (finding that judicial economy favored keeping the state claims against the individual defendant in federal court even though the state claim against the municipality had to be dismissed for state court resolution under the Tennessee Governmental Tort Liability Act).

In sum, genuine issues of fact exist on all of the state law claims, however, the negligence and gross negligence claims against Sneed will be dismissed for possible resolution in state court. The other state claims will remain in this court given the great similarity of issues involved in these claims with that of the issues involved in the federal claim.

C. The Federal Claim Against Metro

Plaintiff sues the Metro municipality under 42 U.S.C. § 1983[2] on two theories: 1) that Metro had inadequate training policy or custom that led to the deprivation of Ms. Brooks constitutional rights and (2) that Metro was deliberately indifferent to the rights of Ms. Brooks in

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[1] *See infra* Section D.

[2] The Supreme Court held a local government a "person" within the meaning of 42 U.S.C. § 1983 in *Monell v. New York Dep't of Social Servs.*, 436 U.S. 658 (1978).

failing to better supervise Officer Sneed. To avoid summary judgment on the first theory, the plaintiff must make provide evidence "that a training program is inadequate to the tasks that the officers must perform; that the inadequacy is the result of the city's deliberate indifference and that the inadequacy is 'closely related to' or 'actually caused' the plaintiff's injury." *Hill v. McIntyre*, 884 F.2d 271, 275 (6th Cir. 1989) (quoting *City of Canton v. Harris*, 489 U.S. 378, 390-91 (1989)). To make out the second, supervisory responsibility theory, the plaintiff must establish that there was an inadequate supervisory policy or custom, that there was a link between this inadequate supervision and the harm in question, and that there was more than simply failure to act or simple negligence by the supervisory personnel but rather there was deliberate indifference to the effect the inadequate supervision was having or could have on persons. *See Brandon v. Holt*, 469 U.S. 464; *Rizzo v. Goode*, 423 U.S. 362 (1976); *Leach v. Shelby County Sheriff*, 891 F.2d 1241, 1247 (6th Cir. 1989); *Brandon v. Allen*, 645 F. Supp. 1261 (W.D. Tenn. 1986).

Note that a municipality may not be held liable under § 1983 on a *respondeat superior* theory. Rather, the "officials should be personally liable in damages only for their own unconstitutional behavior." at 1246. The local government, unlike its employees, is not granted qualified immunity. *See Owen v. City of Independence*, 445 U.S. 622 (1980). Because an employee may be found not liable due to his or her qualified immunity, and thus not because a constitutional deprivation did not occur, a municipality may be found liable under § 1983 even if its

employee is not in the related case. *See Doe v. Sullivan*, 956 F.2d 545, 554 (6th Cir. 1992).

On the inadequate training claim, the plaintiff has set out expert testimony bringing into question the adequacy of Metro's training program on the use of force. Moreover, this testimony indicates that inadequacies in this training policy were responsible at least for the number of shots fired into Ms. Brooks. If not the initial firing as well, and that Metro should have known this policy could have led to the violation of civilians' rights.[3]

Plaintiff has made out a *prima facie* case for her inadequate training claim through the use of expert testimony, and the Sixth Circuit has noted that such a promulgation of evidence is to be given considerable respect:

> [W]e do not believe the opinions of experts are to be given no weight by this court, as the City apparently urges. Especially in the context of a failure to train claim, expert testimony may prove the sole avenue available to plaintiffs to call into question the adequacy of a municipality's training procedures. To disregard expert testimony in such cases would we believe, carry with it the danger of effectively insulating a municipality from liability for injuries resulting directly from its indifference to the rights of

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[3] The standard of "deliberate indifference" is one of knowledge, nor culpability. Specifically, a municipality must have known or should have known of an inadequacy or flaw in one of its policies or customs before it can be labelled "deliberately indifferent." *See Harris*, 489 U.S. at 388 n.8 (discussing the deliberate indifference standard).

> citizens. Reliance on expert testimony is particularly appropriate where as here, the conclusions rest directly upon the expert's review of materials provided by the City itself.

Russo v. City of Cincinnati, 953 F.2d 1036, 1047 (6th C 1992). Given these admonitions by the Sixth Circuit plaintiff's use of expert testimony, Metro's offering contradictory expert testimony is insufficient to s Metro is entitled to judgment on this issue as a matter law. The persuasiveness of the experts will likely determinative of this issue, and this is a judgment for t jury to make. Moreover, Metro's recital of the stat approval of its training programs does not suffice. municipality may not "shield itself from liability for fa ure to train its police officers in a given area simply offering a course nominally covering the subject," for it the "*content* of the training" that is in question. *Id.* genuine dispute exists on the inadequate training clai

With regard to the supervisory responsibility clai the plaintiff has put forth evidence that Officer Sneed w the source of several complaints, and a few lawsui involving excessive force, particularly over recent histo The plaintiff also establishes, though the defendant d agrees, that Metro did not take these complaints seriou enough. Finally, plaintiff offers expert testimony bolst ing the conclusion that Metro was or should have be aware of the violent nature of Officer Sneed and shou have better supervised him and that the disciplinary p icy in the department was inadequate. The linka between the ostensibly inadequate supervision and t death of Ms. Brooks is apparent: had Metro better sup vised and disciplined Officer Sneed, and perhaps ev

removed him from unpartnered patrol in a potentially dangerous area, then the incident in question would have been avoided. Metro argues in response that only two prior incidents resulted in complaints or lawsuits against Officer Sneed, and that this is insufficient to put Metro on notice. But given the evidence offered by the plaintiff, the very number of excessive force incidents, not to mention at what point Metro should have been on notice of a possible problem, is in dispute. Summary judgment is inappropriate on the inadequate supervision claim.

In sum, plaintiff has made out cases for inadequate training and supervision sufficient to go ahead with its claim against Metro under § 1983. Summary judgment will be denied Metro on the federal claim.

D. The State Claim Against Metro

Under the Tennessee Governmental Tort Liability Act ("TGTLA"), Tenn. Code Ann. §§ 29-20-101 *et seq.*, the plaintiff charges Metro with negligence or gross negligence due to Metro's supposed poor training and supervision of Officer Sneed. This court previously ruled that actions under the TGTLA against municipalities must be dismissed and heard first in state court. *Beddingfield v. City of Pulaski*, 666 F. Supp. 1064, 1067 (M.D. Tenn. 1987), *see also Timberlake v. Benton*, 786 F. Supp. 676, 696-97 (M.D. Tenn. 1992). This court concluded that, given the claim of "exclusive original jurisdiction" in the TGTLA, *see* Tenn. Code Ann. § 29-20-307 (Supp. 1992), federalism concerns and deference to state court adjudication of state law predominated over judicial economy concerns embodied

in the doctrine of pendent jurisdiction. *See Beddingfield*, 666 F. Supp. at 1067 & n.2.

This decision was made, however, before the new federal supplemental jurisdiction statute was enacted in 1990. *See* 28 U.S.C.A. § 1367 (West Supp. 1993). The new version of this statute strongly favors the exercise of pendent jurisdiction, and greatly circumscribes the situations wherein dismissal of state claims from a suit is appropriate. *See id.* § 1367(a), (c). This court concludes, however, that deference to a state claim of exclusive original jurisdiction is a "compelling reason" to decline pendent jurisdiction, appropriate under § 1367(c). Therefore, the *Beddingfield* decision will continue to be adhered to by this court and the state claim against Metro will be dismissed.

CONCLUSION

Summary judgment will be denied defendant Sneed on all issues but for the state law negligence/gross negligence claim. Summary judgment will be denied defendant Metro on the federal claim but will be granted on the state claim. An Order in accord will issue.

/s/ T.A. Wiseman,
Thomas A. Wiseman, Jr.
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES Q. BROOKS (Deceased), Formerly A Citizen And Resident Of Davidson County, Tennessee, And HELEN BROOKS, A Citizen And Resident Of Davidson County, Tennessee, Individually, And As The Administratrix For The Estate Of JACQUES Q. BROOKS, Deceased,
Plaintiffs,

vs.

WILLIAM SNEED, Individually, And In His Capacity As A Police Officer For The Metropolitan Government Of Nashville And Davidson County, Tennessee, And THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE,
Defendants.

NO. 3 90 0917

JURY DEMAND

(Filed Oct. 10, 1990)

COMPLAINT

I.

PARTIES

1. The Plaintiff, JACQUES Q. BROOKS (Deceased), was a citizen and resident of Nashville, Davidson County, Tennessee, (hereinafter referred to as "JACKIE BROOKS").

2. The Plaintiff, HELEN BROOKS, is a citizen and resident of Nashville, Davidson County, Tennessee. The Plaintiff, HELEN BROOKS, has brought suit, Individually, as the mother and next friend of her daughter, JACKIE BROOKS. The Plaintiff, HELEN BROOKS, has also brought suit against the Defendants in her representative capacity as the Administratrix of the Estate of JACKIE BROOKS.

3. The Defendant, WILLIAM SNEED, at all times material hereto, was duly appointed, employed, and acting as a policeman for the Defendant, THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, acting under the supervision, authority, and control of THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE. The Defendant, WILLIAM SNEED, at all times relevant hereto, was acting under color of law. The Defendant, WILLIAM SNEED, has also been sued Individually for the wrongful conduct described herein.

4. The Defendant, THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE (hereinafter referred to as "METRO"), is a municipal corporation and is the duly constituted government of Nashville and Davidson County, Tennessee. METRO is a citizen of the State of Tennessee.

II.

JURISDICTION AND VENUE

5. This cause of action for money damages is brought under 42 U.S.C. Section 1983 and under Tennessee State Law.

Pursuant to 28 U.S.C. Section 1331 and 28 U.S.C. Section 1343, this Court has original federal question jurisdiction over the claims brought under 42 U.S.C. Section 1983. In addition, this Court may exercise pendant jurisdiction over the claims arising under State Law.

6. Venue is proper in this district pursuant to 28 U.S.C. Section 1391 because, as is more particularly alleged below, all of the Defendants reside in this district and the claims arose in this district.

III.

FACTUAL ALLEGATIONS

7. On March 13, 1990, at approximately 6:30 P.M., THE METROPOLITAN POLICE DEPARTMENT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE, received a call from a woman who identified herself as JACKIE BROOKS, the Deceased Plaintiff. JACKIE BROOKS advised the dispatcher that a domestic dispute had arisen at 1613 Haynes Meade Circle, Nashville, Davidson County, Tennessee. The Plaintiff, JACKIE BROOKS, requested police assistance.

8. The Plaintiff, JACKIE BROOKS, was mildly physically and mentally disabled as a result of a diabetic coma she had recovered from several years before. The Plaintiff, JACKIE BROOKS, had called the police because of an argument she had with her uncle, FREDDIE SWOPE, as to the fact that certain of his friends should not be visiting him at their home at 1613 Haynes Meade Circle. JACKIE BROOKS, and her uncle, FREDDIE SWOPE, had exchanged words and wrestled in the BROOKS' kitchen. During this altercation, FREDDIE SWOPE took a knife

away from his niece, JACKIE BROOKS, who, in the hea of their argument had obtained it from somewhere in the kitchen. The dispatcher who received the call was respon sible for dispatching OFFICER WILLIAM SNEED to 161 Haynes Meade Circle to assist JACKIE BROOKS.

9. Within a short period of time after the call by JACKIE BROOKS to the police, the Defendant, SNEED, arrived at Haynes Meade Circle and slowly drove up the street. Prior to reaching 1613 Haynes Meade Circle, the Defendant, SNEED, removed from his holster his 9- millimeter semi-automatic pistol. As the Defendant, SNEED, drove up Haynes Meade Circle, he noticed a young black woman walking towards him and away from a black male. The young black woman walking toward the Defendant, SNEED, in his patrol car, was JACKIE BROOKS. The Defendant, SNEED, at this time, observed that JACKIE BROOKS had in her left hand a knife. The black male, who was standing in front of 1613 Haynes Meade Circle, was FREDDIE SWOPE, the maternal uncle of JACKIE BROOKS.

10. When the Defendant, SNEED, was within a few feet of JACKIE BROOKS, a short conversation ensued. The driver window of the Defendant, SNEED'S patrol car was partially open as this conversation occurred. The Defendant, SNEED, knew or should have known that JACKIE BROOKS was the domestic victim who had called the police for assistance. JACKIE BROOKS had identified herself to the dispatcher. The Defendant, SNEED, knew or should have known, that JACKIE BROOKS was angry at her uncle, FREDDIE SWOPE, and not at him.

11. During the course of the conversation between the Defendant, SNEED, and JACKIE BROOKS, JACKIE BROOKS took no threatening action toward the Defendant, SNEED. Rather, the Defendant, SNEED, knew or should have known, that JACKIE BROOKS, had requested the assistance of the METROPOLITAN POLICE DEPARTMENT because she had been in an argument with her uncle, FREDDIE SWOPE, who, at the time of this conversation with the Defendant, SNEED, was standing approximately twenty (20) feet away. During the course of the conversation between the Defendant, SNEED, and JACKIE BROOKS, Defendant, SNEED, failed, at any time, to demand that JACKIE BROOKS drop the knife that she was holding in her left hand, which was extended down toward the ground. During the course of the conversation between the Defendant, SNEED, and JACKIE BROOKS, the Defendant, SNEED, failed, at any time, to demand that she step further away from his patrol car. During the course of the conversation between the Defendant, SNEED, and JACKIE BROOKS, the Defendant, SNEED, failed to warn JACKIE BROOKS that his 9-millimeter semi-automatic weapon was drawn and that he would fire same if she did not drop the knife in her left hand. During the course of the conversation between the Defendant, SNEED, and JACKIE BROOKS, the Defendant, SNEED, did not arrest JACKIE BROOKS for any crime under the applicable statutes of the State of Tennessee.

12. At the time of the conversation described herein between the Defendant, SNEED, and JACKIE BROOKS, the Defendant, SNEED, was seated in the privacy of his patrol car with his 9-millimeter, semi-automatic weapon drawn and hidden under his clipboard. *During the course*

of the conversation described herein, JACKIE BROOKS was standing immediately next the Defendant, SNEED's patrol car, with her right side facing his patrol car and the knife in her left hand at her left side.

13. At some point in the time in the short conversation between the Defendant, SNEED, and JACKIE BROOKS, immediately prior to the Defendant, SNEED, discharging his weapon, JACKIE BROOKS raised her right arm and pointed at her uncle, FREDDIE SWOPE, who was standing approximately twenty (20) feet away. At the same time JACKIE BROOKS motioned with her right arm; she advised the Defendant, SNEED, that "I'm gonna kill him", which was clearly directed at her uncle, FREDDIE SWOPE, which she repeated several times. In response, the Defendant, SNEED, advised JACKIE BROOKS "No, you're not", which he repeated several times. Then, suddenly without warning, and without justification, the Defendant, SNEED, discharged his 9-millimeter semi-automatic weapon firing five (5) times, with four (4) of the bullets striking JACKIE BROOKS in either her right side and/or her back. The Defendant, SNEED'S ammunition was specially designed to increase the deadly efficiency of the Defendant, SNEED'S 9-millimeter semi-automatic weapon. *At the time the Defendant, SNEED, discharged his weapon, JACKIE BROOKS was not facing the Defendant, SNEED, but, rather, was facing her uncle. FREDDIE SWOPE, who was standing approximately twenty (20) feet away.*

14. At the time the Defendant, SNEED, discharged his weapon, and all times previous thereto, JACKIE BROOKS had not in any way threatened or menaced the Defendant, SNEED, and did not constitute a threat to the

Defendant, SNEED. At the time the Defendant, SNEED, discharged his weapon, and all time previous thereto, although JACKIE BROOKS had verbally threatened her uncle, FREDDIE SWOPE, he was standing approximately twenty (20) feet away and despite her threat, JACKIE BROOKS did not have the present ability to act upon her threat.

15. At the time the Defendant, SNEED, discharged his weapon, JACKIE BROOKS was standing on the left hand side of Haynes Meade Circle, immediately next to a gully which made JACKIE BROOKS susceptible to being pushed over into the gully by the Defendant, SNEED'S patrol car door. At the time the Defendant, SNEED, discharged his weapon, he was in the safety of his patrol car and had the ability to drive away and/or close his window and lock his door. The Defendant, SNEED, failed to order the victim, JACKIE BROOKS, to retreat from the immediate vicinity of his patrol car. The Defendant, SNEED, failed to use his clip board and/or night stick to persuade the victim, JACKIE BROOKS, to retreat from the immediate vicinity of his patrol car. The Defendant, SNEED, failed to display his 9-millimeter semi-automatic weapon to persuade the victim, JACKIE BROOKS, from the immediate vicinity of his patrol car.

16. The Defendant, SNEED, at the time he shot and killed JACKIE BROOKS, did not reasonably fear for his life and/or the life of FREDDIE SWOPE, and/or the life of any other citizen, because of the inability of JACKIE BROOKS to act on her verbal threats against her uncle, FREDDIE SWOPE. The Defendant, SNEED, at the time he shot and killed JACKIE BROOKS, had other less violent

alternatives available to him rather than the use of deadly force.

17. The shooting of JACKIE BROOKS was witnessed by several family members, including her uncle, FREDDIE SWOPE; her mother, the Plaintiff, HELEN BROOKS; her niece, JASAUNDRA BROOKS; and her niece, TEQUILA BROOKS. Immediately following the shooting, the Defendant, SNEED, emerged from his patrol car and stood above the body of JACKIE BROOKS pointing his 9-millimeter semi-automatic pistol at the victim. Immediately after the unwarranted shooting of JACKIE BROOKS, her family members, particularly the Plaintiff, HELEN BROOKS, moved toward JACKIE BROOKS to assist the dying JACKIE BROOKS and provide comfort. At this time, the Defendant, SNEED, threatened to kill the Plaintiff, HELEN BROOKS, and the other family members and warned them not to approach the victim, JACKIE BROOKS.

18. Within minutes thereafter, the Defendant, SNEED, reentered his patrol car and contacted the METROPOLITAN POLICE DEPARTMENT and advised them that there had been a shooting. Within a short period of time, several Metropolitan Police cars and officers arrived at the shooting scene and provided assistance to the Defendant, SNEED. The Defendant, SNEED, failed to provide any assistance to the Plaintiff, JACKIE BROOKS. None of the additional officers provided any medical assistance to the victim, JACKIE BROOKS. These additional officers who arrived at the shooting scene continued to prevent the victim's mother, the Plaintiff, HELEN BROOKS, from assisting and providing comfort to her dying daughter.

IV.

ALLEGATIONS AGAINST THE DEFENDANT, WILLIAM SNEED, IN HIS OFFICIAL CAPACITY AS AN OFFICER OF THE METROPOLITAN POLICE DEPARTMENT AND INDIVIDUALLY

COUNT 1:

THE DEFENDANT, WILLIAM SNEED, VIOLATED THE FOURTH AMENDMENT RIGHTS OF JACKIE BROOKS.

19. The Plaintiff, HELEN BROOKS, realleges the allegations set forth in paragraphs 1 through 18 herein.

20. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, described herein were done under color of law and were intentional and/or grossly negligent, and/or were undertaken with deliberate indifference to the personal safety of JACKIE BROOKS in violation of the Fourth Amendment of the United States Constitution.

21. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, were the proximate cause of the death of her daughter, JACKIE BROOKS.

22. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, described herein, done under color of law, constituted an unreasonable use of deadly force in violation of her daughter, JACKIE BROOKS' rights guaranteed under the Fourth Amendment of the United States Constitution.

23. The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED, is liable under 42 U.S.C. Section 1983

for damages, and for reasonable attorney's fees and costs, as permitted under 42 U.S.C. Section 1988.

COUNT 2:

THE DEFENDANT, SNEED, VIOLATED JACKIE BROOKS' CONSTITUTIONAL RIGHTS GUARANTEED UNDER THE FOURTEENTH AMENDMENT.

24. The Plaintiff, HELEN BROOKS, realleges the allegations set forth in paragraphs 1 through 23 herein.

25. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, described herein were done under color of law and were intentional and grossly negligent, and/or were undertaken with deliberate indifference to the personal safety of her daughter, JACKIE BROOKS.

26. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, were a proximate cause of the death of her daughter, JACKIE BROOKS.

27. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, done under color of law, were intentional, and/or grossly negligent, and constituted a depravation of her daughter, JACKIE BROOKS' constitutional rights which are protected by due process of law, which are rights secured by the Fourteenth Amendment of the United States Constitution.

28. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, violated the

substantive due process rights of her daughter, JACKIE BROOKS.

29. The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED, is liable under 42 U.S.C. Section 1983 for damages, and for reasonable attorney's fees and costs, as permitted under 42 U.S.C. Section 1988.

COUNT 3:

WRONGFUL DEATH OF JACKIE BROOKS.

30. The Plaintiff, HELEN BROOKS, realleges the allegations set forth in paragraphs 1 through 29 herein.

31. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, give rise to a cause of action as provided for in T.C.A. §20-5-101, et. seq., more particularly described in T.C.A. §20-5-106.

32. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, were the proximate cause of the death of her daughter, JACKIE BROOKS.

33. The Plaintiff, HELEN BROOKS, alleges that, as the Administratrix of the Estate of JACKIE BROOKS, and as her next of kin, the Plaintiff, HELEN BROOKS, has the right to bring this cause of action for the wrongful death of her daughter, JACKIE BROOKS, as prescribed by T.C.A. §20-5-107.

34. The Plaintiff, HELEN BROOKS, alleges that, as the personal representative and next of kin of JACKIE BROOKS, Deceased, she is entitled to recover all damages recoverable under the wrongful death statute, including

but not limited to, those damages prescribed in T.C.A. §20-5-113.

COUNT 4:

ASSAULT.

35. The Plaintiff, HELEN BROOKS, realleges the allegations set forth in paragraphs 1 through 34 herein.

36. The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED'S conduct was both willful and intentional.

37. The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED'S conduct constituted an unreasonable use of deadly force.

38. The Plaintiff, HELEN BROOKS, alleges that the actions of the Defendant, SNEED, constitute an assault upon the person of her daughter, JACKIE BROOKS. The Plaintiff, HELEN BROOKS, alleges that the described conduct of the Defendant, SNEED, caused her daughter, JACKIE BROOKS, to be fearful of bodily injury, and did in fact, result in bodily injury and her death, which was proximately caused by the conduct of the Defendant, SNEED.

39. The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED'S conduct exceeded the qualified immunity afforded him as a Police Officer acting under color of law in Nashville, Davidson County, Tennessee.

40. The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED, at the time of said assault, was acting as an agent and employee of the Defendant, METRO.

COUNT 5:

BATTERY.

41. The Plaintiff, HELEN BROOKS, realleges the allegations set forth in paragraphs 1 through 40 herein.

42. The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED'S conduct was both willful and intentional.

43. The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED'S conduct constituted unreasonable use of deadly force.

44. The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED, did, without warning, shoot her daughter, JACKIE BROOKS, four (4) times with a 9-millimeter semi-automatic weapon, causing death. The Plaintiff, HELEN BROOKS, alleges that this physical contact by the Defendant, SNEED, was without the consent of her daughter, JACKIE BROOKS, and was unnecessary, and therefore, was wrongful and constituted a battery.

45. The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED'S conduct exceeded any qualified immunity afforded him as a Police Officer performing his duties in Nashville, Davidson County, Tennessee.

46. The Plaintiff, HELEN BROOKS, alleges that, at the time of the described battery, the Defendant, SNEED, was an agent and employee of the Defendant, METRO.

COUNT 6:

OUTRAGEOUS CONDUCT.

47. The Plaintiff, HELEN BROOKS, realleges the allegations set forth in paragraphs 1 through 46 herein.

48. The Plaintiff, HELEN BROOKS, alleges that the actions of the Defendant, SNEED, were willful and intentional and of such outrageous nature as to shock the conscience of this community. The Plaintiff, HELEN BROOKS, alleges that the actions of the Defendant, SNEED, were contrary to the conduct this community expects of its Police Officers placed under similar circumstances.

49. The Plaintiff, HELEN BROOKS, alleges that at the time of the outrageous conduct by the Defendant, SNEED, he was acting as an agent and employee of the Defendant, METRO.

COUNT 7:

GROSS NEGLIGENCE.

50. The Plaintiff, HELEN BROOKS, realleges the allegations set forth in paragraphs 1 through 49 herein.

51. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, were in such reckless disregard for the safety of her daughter, JACKIE BROOKS, and that such acts and omissions constitute gross negligence.

52. The Plaintiff, HELEN BROOKS, alleges that the gross negligence of the Defendant, SNEED, exceeded any qualified privilege he may have been afforded as a Police

Officer performing his duties in Nashville, Davidson County, Tennessee.

53. The Plaintiff, HELEN BROOKS, alleges that, at the time of the gross negligence of the Defendant, SNEED, he was acting as an agent and employee of the Defendant, METRO.

COUNT 8:

NEGLIGENCE.

54. The Plaintiff, HELEN BROOKS, realleges the allegations set forth in paragraphs 1 through 53 herein.

55. The Plaintiff, HELEN BROOKS, alleges that the actions of the Defendant, SNEED, were negligent in that said actions constituted an unreasonable use of deadly force and a breach of a duty owed to the Plaintiff, JACKIE BROOKS. The Plaintiff, HELEN BROOKS, alleges that such negligence and/or unreasonable use of deadly force, exceeded any qualified immunity which the Defendant, SNEED, may have been entitled to. The Plaintiff, HELEN BROOKS, alleges that at the time of the negligence of the Defendant, SNEED, he was acting as an agent and employee of the Defendant, METRO, and that the Defendant, SNEED, is liable for such negligence.

V.

ALLEGATIONS AGAINST DEFENDANT, METRO

COUNT 1:

THE DEFENDANT, METRO, IS LIABLE FOR THE DEFENDANT, SNEED'S VIOLATION OF THE FOURTH AMENDMENT RIGHTS OF JACKIE BROOKS.

56. The Plaintiff, HELEN BROOKS, realleges the allegations set forth in paragraphs 1 through 55 herein.

57. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, described herein were done under color of law and were intentional, and/or grossly negligent, and/or were undertaken with deliberate indifference to the personal safety of JACKIE BROOKS, in violation of the Fourth Amendment of the United States Constitution.

58. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, were the proximate cause of the death of her daughter, JACKIE BROOKS.

59. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, described herein, done under color of law, constituted an unreasonable use of deadly force in violation of her daughter, JACKIE BROOKS' rights guaranteed under the Fourth Amendment of the United States Constitution.

60. The Plaintiff, HELEN BROOKS, alleges that the Defendant, METRO, acted with deliberate indifference as to the Defendant, SNEED'S violation of her daughter,

JACKIE BROOKS' rights guaranteed under the Fourth Amendment of the United States Constitution, by:

(a) Failing to properly train and supervise the Defendant, SNEED, in how and when to use deadly force. The Plaintiff, HELEN BROOKS, alleges that in 1985, the United States Supreme Court held that the Tennessee Statute as to when and how a Police Officer could use deadly force was held unconstitutional. The Plaintiff, HELEN BROOKS, alleges that the Tennessee Legislature did, after said ruling, enact a new statute as to when and how a Police Officer, acting under color of law, could use deadly force. The Plaintiff, HELEN BROOKS, alleges that the Defendant, METRO, with deliberate indifference, failed to train and supervise the Defendant, SNEED, as to how and when he could use deadly force in accordance with the new statute passed by the Tennessee Legislature; (b) The Plaintiff, HELEN BROOKS, alleges that in 1990, the Defendant, METRO, made a decision that the Defendant, SNEED, and other Police Officers employed as agents of the Defendant, METRO, could, voluntarily and at their own expense, purchase and carry 9-millimeter semi-automatic weapons. The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED, elected to purchase, at this own cost, a 9-millimeter semi-automatic weapon. The Plaintiff, HELEN BROOKS, alleges that with deliberate indifference, the Defendant, METRO, failed to properly train and supervise the Defendant, SNEED, in the use of his 9-millimeter, semi-automatic weapon. The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED, as described herein, discharged his 9-millimeter semi-automatic weapon five (5) times, striking

JACKIE BROOKS four (4) times in the back and/or right side. The Plaintiff, HELEN BROOKS, alleges that the failure of the Defendant, METRO, to properly train and supervise the Defendant, SNEED, in the use of his 9-millimeter semi-automatic weapon was a direct and proximate result of the death of her daughter, JACKIE BROOKS; (c) The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED, had along history of violence while employed as an agent for the Defendant, METRO. The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED, had previously been named a party Defendant in a lawsuit filed in accordance with 42 U.S.C. Section 1983. The Plaintiff, HELEN BROOKS, alleges that the Defendant, METRO, did, on behalf of the Defendant, A, pay money damages for the wrongful conduct of the Defendant, SNEED, in violation of the constitutional rights of other citizens of Nashville, Davidson County, Tennessee. The Plaintiff, HELEN BROOKS, alleges that the Defendant, METRO, knew of the Defendant, SNEED'S propensity for violence and inappropriate use of force. The Plaintiff, HELEN BROOKS, alleges that despite this knowledge, with deliberate indifference, the Defendant, METRO, failed to discipline the Defendant, SNEED, and/or perform any psychological tests, and/or evaluation to determine whether or not the Defendant, SNEED, possessed the requisite judgment to remain a Police Officer employed by the Defendant, METRO. The Plaintiff, HELEN BROOKS, alleges that the failure of the Defendant, METRO, to properly supervise the conduct of the Defendant, SNEED, was a proximate cause in the death of her daughter, JACKIE BROOKS.

61. The Plaintiff, HELEN BROOKS, alleges that the Defendant, METRO, is liable under 42 U.S.C. Section 1983 for damages, and for reasonable attorney's fees and costs, as permitted under 42 U.S.C. Section 1988.

COUNT 2:

THE DEFENDANT, METRO, IS LIABLE FOR THE DEFENDANT, SNEED'S VIOLATION OF JACKIE BROOKS' CONSTITUTIONAL RIGHTS GUARANTEED UNDER THE FOURTEENTH AMENDMENT.

62. The Plaintiff, HELEN BROOKS, realleges the allegations set forth in paragraphs 1 through 61 herein.

63. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, described herein were done under color of law and were intentional, and/or grossly negligent, and/or were undertaken with deliberate indifference to the personal safety of her daughter, JACKIE BROOKS.

64. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, were a proximate cause of the death of her daughter, JACKIE BROOKS.

65. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, done under color of law, were intentional, and/or grossly negligent, and constituted a deprivation of her daughter, JACKIE BROOKS' constitutional rights which are protected by due process of law, which are rights secured by the Fourteenth Amendment of the United States Constitution.

66. The Plaintiff, HELEN BROOKS, alleges that the Defendant, METRO, acted with deliberate indifference as to the Defendant, SNEED'S violation of her daughter, JACKIE BROOKS' rights guaranteed under the Fourteenth Amendment of the United States Constitution, by:

(a) Failing to properly train and supervise the Defendant, SNEED, in how and when to use deadly force. The Plaintiff, HELEN BROOKS, alleges that in 1985, the United States Supreme Court held that the Tennessee Statute as to when and how a Police Officer could use deadly force was held unconstitutional. The Plaintiff, HELEN BROOKS, alleges that the Tennessee Legislature did, after said ruling by the United States Supreme Court, enact a new statute as to when and how a Police Officer, acting under color of law, could use deadly force. The Plaintiff, HELEN BROOKS, alleges that the Defendant, METRO, with deliberate indifference, failed to train and supervise the Defendant, SNEED, as to how and when he could use deadly force in accordance with the new statute passed by the Tennessee Legislature;

(b) The Plaintiff, HELEN BROOKS, alleges that in 1990, the Defendant, METRO, made a decision that the Defendant, SNEED, and other Police Officers employed as agents of the Defendant, METRO, could, voluntarily and at their own expense, purchase and carry 9-millimeter semi-automatic weapons. The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED, elected to purchase, at this own cost, a 9-millimeter semi-automatic weapon. The Plaintiff, HELEN BROOKS, alleges that with deliberate indifference, the Defendant, METRO, failed to properly train and supervise the Defendant,

SNEED, in the use of his 9-millimeter semi-automatic weapon. The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED, as described herein, discharged his 9-millimeter semi-automatic weapon five (5) times, striking JACKIE BROOKS four (4) times in the back and/or right side. The Plaintiff, HELEN BROOKS, alleges that the failure of the Defendant, METRO, to properly train and supervise the Defendant, SNEED, in the use of his 9-millimeter semi-automatic weapon was a direct and proximate result of the death of her daughter, JACKIE BROOKS;

(c) The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED, had a long history of violence while employed as an agent of the Defendant, METRO. The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED, had previously been named a party Defendant in a lawsuit filed in accordance with 42 U.S.C. Section 1983. The Plaintiff, HELEN BROOKS, alleges that the Defendant, METRO, did, on behalf of the Defendant, SNEED, pay money damages for the wrongful conduct of the Defendant, SNEED, in violation of the constitutional rights of other citizens of Nashville, Davidson County, Tennessee. The Plaintiff, HELEN BROOKS, alleges that the Defendant, METRO, knew of the Defendant, SNEED'S propensity for violence and inappropriate use of force. The Plaintiff, HELEN BROOKS, alleges that despite this knowledge, with deliberate indifference, the Defendant, METRO, failed to discipline the Defendant, SNEED, and/or perform any psychological tests, and/or evaluation, to determine whether or not the Defendant, SNEED, possessed the requisite judgment to remain a

Police Officer employed by the Defendant, METRO. The Plaintiff, HELEN BROOKS, alleges that the failure of the Defendant, METRO, to properly supervise the conduct of the Defendant, SNEED, was a proximate cause in the death of her daughter, JACKIE BROOKS.

67. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, violated the substantive due process rights of her daughter, JACKIE BROOKS. The Plaintiff, HELEN BROOKS, alleges that the Defendant, METRO, with deliberate indifference, through its acts and omissions, violated the substantive due process rights of her daughter, JACKIE BROOKS, as well as the other citizens of Nashville, Davidson County, Tennessee.

68. The Plaintiff, HELEN BROOKS, alleges that the Defendant, METRO, is liable under 42 U.S.C. Section 1983 for damages and for reasonable attorney's fees and costs as permitted under 42 U.S.C. Section 1988.

COUNT 3:

NEGLIGENCE AND/OR GROSS NEGLIGENCE OF THE DEFENDANT, SNEED.

69. The Plaintiff, HELEN BROOKS, realleges the allegations set forth in paragraphs 1 through 68 herein.

70. The Plaintiff, HELEN BROOKS, alleges that the Defendant, METRO, is liable for the negligence and/or gross negligence of the Defendant, SNEED, as provided in the Governmental Tort Liability Act, T.C.A. §29-20-101, et. seq. The Plaintiff, HELEN BROOKS, alleges that at the time of the negligence and/or gross negligence of the

Defendant, SNEED, he was acting as an agent and employee of the Defendant, METRO.

VI.

DAMAGES

71. The Plaintiff, HELEN BROOKS, realleges the allegations set forth in paragraphs 1 through 70 herein.

72. The Plaintiff, HELEN BROOKS, alleges that the Defendants are jointly and severally liable to her for the wrongful death of her daughter, JACKIE BROOKS. The Plaintiff, HELEN BROOKS, alleges that the Defendants are jointly and severally liable for all damages proximately caused, including those damages prescribed by T.C.A. §20-5-113. The Plaintiff, HELEN BROOKS, alleges that as a direct and proximate result of the wrongful conduct of the Defendants, described herein, her daughter, JACKIE BROOKS, is dead, thus, deprived of her right to enjoyment of life. The Plaintiff, HELEN BROOKS, alleges that this loss is a direct and proximate result of the Defendants' violating the constitutional rights of her daughter, JACKIE BROOKS.

73. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, were done under color of law and were intentional and/or grossly negligent, and/or were taken with deliberate indifference to the personal safety of JACKIE BROOKS, in violation of her constitutional rights.

74. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, METRO, were

undertaken with deliberate indifference to the constitutional rights of her daughter, JACKIE BROOKS, and the other citizens of Nashville, Davidson County, Tennessee. The Plaintiff, HELEN BROOKS, alleges that the Defendants are jointly and severally liable under 42 U.S.C. Section 1983 for damages and for reasonable attorney's fees and costs, as permitted under 42 U.S.C. Section 1988.

75. The Plaintiff, HELEN BROOKS, alleges that the acts and omissions of the Defendant, SNEED, described herein, were done intentionally and/or were grossly negligent, with reckless disregard for the safety of her daughter, JACKIE BROOKS. The Plaintiff, HELEN BROOKS, alleges that the Defendant, SNEED, is liable not only for compensatory damages, but punitive damages as well.

WHEREFORE, the Plaintiff, HELEN BROOKS, Individually, sues the Defendants, jointly and severally, for TWO MILLION ($2,000,000.00) DOLLARS in compensatory damages. The Plaintiff, HELEN BROOKS, demands a jury to try her cause.

WHEREFORE, the Plaintiff, HELEN BROOKS, as Administratrix of the Estate of JACKIE BROOKS, sues the Defendants, jointly and severally, for TWO MILLION. ($2,000,000.00) DOLLARS in compensatory damages. The Plaintiff, HELEN BROOKS, demands a jury to try her cause.

WHEREFORE, the Plaintiff, HELEN BROOKS, sues the Defendant, WILLIAM SNEED, for punitive damages

in the amount of TWO MILLION ($2,000,000.00) DOLLARS. The Plaintiff, HELEN BROOKS, demands a jury to try her cause.

RESPECTFULLY SUBMITTED,

/s/ Donald D. Hildebrand,
DONALD D. HILDEBRAND,
#2782

/s/ Earl W. Roberts, Jr.,
EARL W. ROBERTS, JR.,
#10193

ATTORNEYS FOR THE
PLAINTIFF
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Nashville, TN 37219-0348
(615)244-2070

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES Q. BROOKS, et al.,

Plaintiffs,

vs.

Case No. 3:90-0917
Judge Wiseman

WILLIAM SNEED, et al.,

Defendants.

APPEARANCES:

Mr. Donald D. Hildebrand
Mr. Earl W. Roberts
Attorneys at Law
Nashville, Tennessee

on behalf of the Plaintiffs;

Mr. James L. Charles
Deputy Director, Metro Legal
Nashville, Tennessee

on behalf of Metropolitan Government;

Mr. John M. L. Brown
Attorney at Law
Nashville, Tennessee

on behalf of William Sneed.

Also Present: William Sneed.

DEPOSITION OF HELEN BROOKS

June 17, 1991

ASSOCIATED REPORTERS
Two Twenty-One Fourth Avenue North
Nashville, Tennessee 37219
(615) 255-3632

[p. 67] angry enough to have a knife in her hand?

A Yes.

Q Ever seen her angry enough where she had anything else in her hand?

A No.

Q Have you ever seen her before that time threaten anybody with anything?

A No. Just boys, she would run them out of her room.

Q James and Mario?

A Yes. Any of them.

Q Sometimes other boys come over?

A No. Them two boys and them two girls.

Q Tequila and Jasaundra?

A Right.

Q Does Jasaundra live with you?

A Sometimes. She's there. When she don't go home and spend the night with her mother or something. She's there more than she's anywhere else. More than she is at home rather.

Q She stay in Tequila's room?

A Yes.

Q When she's at your house?

A Yes. She sleep in my room sometimes.

Q Mrs. Brooks, could you just draw a rough

* * *

[p. 90] A Yes, pitch it over in the sink.

Q Which way do you head after you've done that? Do you head over to the stove?

A Yeah. Went back to the stove and around to the table.

Q And what is Freddy saying?

A Nothing.

Q And what is Jacques saying?

A Nothing.

Q Jacques hadn't said a thing since you have seen her on the floor?

A No.

Q Well, what happens next, that you remember?

A Next thing I remember is Jacques – Freddy had – both of them had done got up off the floor. Then Jacques was – Freddy had gone on through the living room to go on downstairs and Jacques was dialing for the police.

Q Dialing the police?

A Yes, or calling the police. Dialing the telephone.

Q You go down, you can get to downstairs by coming back the hallway to the living room and dining room?

A Yes.

Q What has Tequila done anything by that time?

A She had done put the drops in his eye.

[p. 91] Q So that happened in the kitchen?

A Yes.

Q You saw that?

A No, I didn't see her put the drops in his eye.

Q Tequila say anything?

A No.

Q How about Jasaundra, has she told you anything?

A No.

Q She hadn't said anything about Jacques or your brother being on the floor with the knife?

A No.

Q Well, what did you do when Jacques started to call the police?

A Went over to cut it off. Cut the call off. Mashed on the receiver.

Q Had you taught Jacques how to call the police?

A She knew from – they always watching TV. She could hear them, the fire and the police, the doctor.

Q Had she ever called the police before?

A Not as I know of.

Q Do you know if she dialed 911 or what she did?

A Yes.

Q She did dial 911?

A I know she said, Police. I'm sure she dialed [p. 92] 911.

Q All right. Did she say anything before you hung it up, hung up the receiver the first time?

A No. Because Freddy had gone on downstairs.

Q Did you hear her say anything over the phone the first time?

A She was mumbling something on the telephone. I believe she said Helen Brooks. I believe that's what she said.

Q Is that the first time or do I understand she called again?

A She tried to call again. That first call I think went through because –

Q You do?

A Yes. Because I was over by the table and by the time I got over there, hung up the phone, I think it went through. But I'm sure the second one did.

Q You hung up the second one pretty quick?

A Yes.

Q All right. What did you say to her when you hung up the phone?

A I asked her why she was calling them.

Q What did see say?

A Nothing. Just went on downstairs.

Q Did she often not answer you when you asked

* * *

[p. 103] Q Did you carry it up?

A No. I left it – when I was fastening the gate I left it there.

Q Why did you do that?

A I just wasn't thinking because they went on up the front. And they done settled down then because Jacques turned – when I told Freddy, Come on, let me carry you up to Annette, Jacques come and started on up the street. And I was there by the car then.

Q Was Mr. Thornton in the yard then?

A No.

Q Do you know where he was?

A No, I don't.

Q Have you learned since where he was?

A I haven't asked him.

Q Has anyone told you?

A No.

Q So you don't have any idea where he was?

A I don't know where Mr. Thornton was.

Q Did you see anybody else out in their yard?

A No.

Q Well, what did Freddy say, your brother say when you told him to get in the car?

A I told him to come on, let me carry him up to Annette's. I don't remember him saying anything.

[p. 104] Q Do you remember anybody saying anything in the front or around the house?

A No.

Q So you're the only one that said anything?

A Right.

Q What's the next thing that you remember?

A Next thing I remember, Jacques was going up to Annette.

Q To Annette?

A Annette Drennon.

Q All right. And then what happens?

A What happens then?

Q Yes, ma'am.

A Then Freddy, he went on out to watch Jacques, I guess, because he went on out in the street. And we always watch Jacques when she leaves the house –

Q All right.

A – to go up to Annette.

Q Okay.

A And he was watching Jacques I guess all – so I had come up there to carry him up to Annette. And Jacques, she turned, she went up to Annette.

Q Wait a minute. Who had come up?

A I had. To carry him in the car. When I left from the gate, come up to the car, hollered out for Freddy, [p. 105] Come on, let me carry you up to Annette.

Q Yes, ma'am. Yes, ma'am.

A And Freddy went to the front and Jacques went – she beared back to the right and she was going on up to Annette's, I guess that's where she was going because she was going up the street. Freddy was standing out in the front watching Jacques.

Q What's the next thing you remember?

A Next thing I remember is Tequila said – when Tequila said, Here come the police.

Q All right. Did you see them?

A Yes. I seen the car.

Q All right. Did you see it coming down the road?

A No. It was already out. Already out there.

Q Stopped?

A It was stopping and he was speeding.

Q He was speeding?

A Yes. 'Cause he had to be because when the car – you hear a car when they put on brakes, the tires squeeling.

Q So you heard it brake?

A Heard it brake, yes.

Q Heard the tires skid or whatever?

A Yes.

[p. 106] Q Skid?

A Yes.

Q Well, what do you do then?

A I turns to go up where the police car were.

Q Are you still in your driveway?

A Yes.

Q So you turn to the right I guess? I assume toward the police car?

A Yes.

Q Do you walk towards the police car?

A Yes.

Q What did you hear?

A I didn't hear anything but the shots.

Q The first thing you heard were shots?

A Yes. At that – no, the first thing I heard was when the car skidded.

Q Yes, ma'am. I already have that. Then the next thing you heard are the shots?

A Shots ringing out.

Q You didn't hear Jacques talking to the policeman?

A No.

Q Or the policeman talking to her?

A No.

Q Were you watching Jacques when she was shot?

[p. 107] A I was looking towards the police car.

Q Could you see Jacques?

A No, I didn't see Jacques.

Q You didn't see Jacques when she was shot?

A After.

Q After she was shot?

A She was on the ground.

Q Okay. I'm a little bit confused, so I apologize for having to go back over this. But you hear the car, the police car stop and you hear it skid?

A Yes.

Q And you're in your driveway?

A Yes.

Q And you're in the front of your house?

A Yes.

Q The driveway?

A Yes.

Q And do you see Jacques next to the police car?

A No.

Q Why?

A I wasn't looking. I was looking at the car.

Q Was there something blocking your vision?

A No.

Q Do you have some explanation why you can't see Jacques next to the car?

[p. 108] A I thought Jacques had gone on up the street.

Q Oh. Can you see the policeman in the car?

A Yes.

Q You can't see Jacques standing next to the police car?

A No. I never saw Jacques standing next to the police car.

Q But then you hear shots?

A Yes.

Q While you're watching the police car?

A No, I had – I had pulled where my leg was hurt at, and then that's when I stooped down and rubbed it once or twice, seen that I have on my brace.

Q Brace?

A Knee brace.

Q For your knee where it had been hurt?

A Yes.

Q Because it was hurting you?

A Yes. When I turned to go up to the police car. I had pulled that main ligament again, at least it was hurt because it's hurt all the time anyway.

Q So you bent down to –

A Check it.

Q – check your knee?

A Yes.

[p. 109] Q All right. The ligament in your knee?

A Right. Right.

Q And that's when you hear the shots?

A Yes. When I raise – raising back up, Freddy called out to me.

Q What did Freddy say?

A Said, Jacques have been shot, Helen.

Q So you hear the shots and Freddy calls that out to you?

A Freddy calls out to me.

Q Yes, ma'am. Now your knee had been hurt a year before?

A I don't know how long it been but it's been –

Q Sometime before?

A Yes.

Q And you had been operated on for that knee?

A Yes.

Q And in that incident you had had Jacques arrested?

A Yes.

Q Tell me about that. How did that happen? How was your knee hurt?

A There was a – Jacques had been up to Annette Drennon's. She had come back. I was getting ready to go to work. Jacques come in my room and she said to Tequila and

* * *

[p. 115] having seen her just as soon as you stood up?

A No.

Q Tell me what happens then. What do you do?

A I hollering for – I started to my brother, I was hollering. I thought it had been him shot.

Q Because you couldn't see Jacques?

A No, I didn't see Jacques. I turned around and he was saying, Jacques's there on the ground, she's been shot.

Q Okay. And then what do you do?

A Then me and her – me and him went to try to get Jacques off – we was going to get her off the ground.

Q Yes, ma'am. And what happens?

A Okay. Then he wouldn't let me. Or Sneed wouldn't let me or Freddy test Jacques. When we first got there, he was over in this ditch, scrambling around there like a chicken looking for food or something.

Q He's on his knees?

A Yes. There. And he had that black – what you call it? – thing to keep you in the car. To call a back-up or something, like a telephone.

Q A radio?

A It was on the ground. Yes, I guess you call it a radio.

Q It was on the ground next to him?

* * *

[p. 137] A No.

Q You make a reference to a motorcyclist that you allege was – and I'm paraphrasing this. Did you allege that there was excessive force used against a motorcyclist by this officer? How did you learn about that incident?

A Through Barry.

MR. ROBERTS: Now let me correct the record here, Mr. Charles. That was the result of discovery which we conducted and told the client about. I don't believe that she learned about that from Mr. Gardner or Mr. Turk.

MR. CHARLES: All right. Yourself and Mr. Hildebrand, the discovery you all did?

MR. ROBERTS: Yes.

Q One last question, Mrs. Brooks. When your daughter Jacques and your brother Freddy Swope were in the kitchen, did you see where her hand had been cut? Was it bleeding?

A When I got the knife from Freddy, both of them had their hand on this knife.

Q Yes, ma'am.

A And Freddy got it away from her. That's when I saw he handed it to me that her hand was cut.

Q What did you say to her?

A I told them to stop. Because it wasn't that bad. So she, you know, could see about her hand.

[p. 138] Q So you didn't mention the hand at all?

A I just told them to stop. But her hand had been cut.

Q You did see her hand's been cut?

A Yes.

MR. CHARES: Thank you, Mrs. Brooks.

MR. HILDEBRAND: All right.

MR. BROWN: We better go have lunch if we want lunch.

(Recess held.)

EXAMINATION

MR. BROWN:

Q Ma'am, John Brown for Officer Sneed. I don't elieve anybody ever asked you your first name, and we ll know it but we need it for the record.

A Helen Brooks.

Q All right. Ma'am, when your daughter Jacques as taken out of Bordeaux Hospital and brought home, id any medical professional ever recommend to you that ne be taken to Clover Bottom?

A No. They wanted her to go to Knoxville.

Q To be sent where in Knoxville?

A Some kind of rehabilitation center up there.

Q And nobody ever said anything about her going

* * *

. 171] his office because they just pulled up and put him ut and we kept on going. We went across the street and I on't know whether he went in there or not.

Q Exactly when during that evening did you get on him about bringing that man in and drinking in your ouse?

A That was at the time that I had done went and cked up Tequila from school and came back and that's hen I was in there fixing – trying to fix the food.

Q Before any of the ruckus started between him and cques?

A They was standing up and talking.

Q But not fussing or anything?

A No. Just standing there talking.

Q And you got on to him about it and he apologized?

A I'm sorry.

Q Then did Jacques say anything to him about it? Did she want to get on to him about saying anything?

A She said, Yes, you know better.

Q Told him he knew better than to do that?

A Yes.

Q And how did he take that?

A Oh, he just probably said, Shut up, Jacques. That's usually what he would do.

[p. 172] Q Just told her to shut up?

A Yes.

Q And how did she react being told to shut up?

A Just kept passing words.

Q Kind of heating up a little bit?

A I guess you would call it that.

Q Did you know this Alvin that was his friend that he brought over?

A Never seen him I know a day in my life.

Q Did you see Freddy Swope get hit in the eye?

A No.

Q Do you know when he was hit?

A No.

Q Do you know which hand Jacques got cut?

A No.

Q There in the kitchen?

A No. Wasn't cut that bad.

Q Was it cut enough to bleed?

A I seen some blood coming out.

Q Can you tell me how long the cut was?

A Wasn't long.

Q Was it in the palm of her hand?

A Yes. From what I could see it was, when I got the knife from him.

Q All right. We start out and you're in the [p. 173] kitchen and they're passing some words back and forth and you say something to Freddy about bringing that man over there, and he apologized, and then Jacques sort of took it up and they started arguing back and forth?

A Jacques said, You knowed better.

Q What is the next thing that happened after that?

A Next thing, I don't know, because I went in the living room – dining room rather, because I walked out the dining room.

Q All right. And you came back and they were on the floor?

A Yes. I come back because the dining room's off from the kitchen.

Q Yes, ma'am.

A I went to check my bag looking for something to –

Q Mustard?

A Mustard or something. My lunch kit to see if that was in there.

Q Did you hear any crash or thud or thump when they hit the floor?

A I never heard it.

Q So you don't know how they got on the floor?

A No.

[p. 174]Q Freddy Swope, you have said he was sort of on the floor and she was on the floor. Was he ever astraddle of her?

A No. She was sitting down.

Q Leaning over her, holding her, sitting right beside of her? He wasn't astride of her?

A No.

Q All right. How was he acting right then? Was he acting mad or –

A No.

Q – happy?

A He wasn't mad.

Q When did he get hit in the eye, after they got up r before?

A I don't know whether it was before or after. But it vasn't – couldn't have been after because he got up, he vent on downstairs.

Q All right.

A After she had done –

Q So he got hit in there between the time you and acques got on to him about bringing the man over and he time that he put her on the floor?

A Yes.

Q But you didn't see it?

A No.

* * *

[p. 187] Q Well, ankle high, knee high?

A I don't know. Because he mows down there. And vater come through there –

Q All right.

A – when it rains.

Q Is it still today about the same as it was then?

A Yes.

Q So we can have a look at it and be able to –

A Nobody dug in it, nobody dug it out.

Q It's just about like it was?

A It's just like it was.

Q All right. How many shots did you hear?

A I don't know. It were so fast I couldn't tell. One right behind, like a fire cracker, bam, bam, bam, bam.

Q Was there any pause in between?

A No pause whatsoever.

Q When you looked at the police car, you could see the officer in it, is that right?

A Yes.

Q Could you see how he was sitting, if he was facing forward or if he was turned sideways in his seat?

A No.

Q Did you see him holding any kind of a book or

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ACQUES Q. BROOKS, et al.,

Plaintiffs,

s. Case No. 3-90-0917

ILLIAM SNEED, et al.,

Defendants.

DEPOSITION OF:

FREDDIE D. SWOPE

June 11, 1991

ASSOCIATED REPORTERS
221 Fourth Avenue North
Nashville, Tennessee 37219
(615) 255-3632

EXHIBIT 214

[p. 6] Q Your name is Freddie Dee Swope?

A That's correct.

Q S-W-O-P-E?

A Yes.

Q Where do you live, Mr. Swope?

A I live at 2021 Greenwood Circle.

Q Nashville?

A Yes.

Q Is that in East Nashville?

A I'm not too familiar. I just move here about a year. Yeah, I consider it East Nashville.

Q What is the nearest big street?

A Gallatin Road.

Q What's your telephone number?

A Telephone number is – I got a telephone. I usually call to my sister's house, Ms. Brooks, 227-9427. I return my phone calls there.

Q All right. Did you at one time live with Helen Brooks?

A That's correct.

Q When did you begin living with her?

A Perhaps August. I moved there August the 12th, 1989, I believe.

Q About six or eight months before this shooting?

* * *

[p. 20] with that, I had a white woman in the car.

Q And you were charged with DUI because you had this white woman in the car?

A That's the only reason I believe I was charged with, because of that.

Q You weren't intoxicated?

A No, couldn't have been. They find bottles and I took the charge.

Q Is Helen Brooks your sister?

A Yes.

Q Same mother, same father?

A Same mother, different father.

Q So you're half brother and sister?

A We got a family unit and it's whole family. We on't believe in separation.

Q I understand. And Jacques Brooks was your iece?

A That's correct.

Q And how is Jenice Brooks related to you?

A That's Helen's daughter. I'm her uncle.

Q So she's your niece, as well.

A Right.

Q How many bedrooms does the house at 1613 Haynes Meade Circle have?

A Three.

* * *

[p. 40] Q. Roger Heights?

A Yes, I went with the family there. Yes.

Q Who else from your family went to church?

A "Quila", they be at different churches. I just can't emember anybody. They be at different churches.

Q Let me direct your attention to March the 13th, 1990. That was the day of this incident. Did you work that day?

A Yes.

Q And were you working for Clopton then?

A C.W. Clopton, yes.

Q What time did you get off that day?

A I got home I'd say around 4:00, yes.

Q 4:00 p.m.?

A Yes, around that time.

Q Had you had anything to drink that day before you came home?

A No.

Q Nothing?

A No. I brought a beer to the house.

Q You brought a fifth of whiskey?

A I said a beer.

Q I'm sorry.

A A beer.

[p. 41] Q You just brought one beer?

A Quart of beer, yes.

Q What kind was it?

A I don't even recall. It was cheap. I didn't have no money.

Q Did you drink that quart?

A Yes, me and co-worker, I just met him on the job. Yes, we drunk that beer.

Q Did you split that quart or did each of you have a quart?

A We split that quart.

Q That's all you had to drink.

A No. I went to Annette. Like all working men do, when you work, I drunk a can up there.

Q So that evening you had part of a quart and then one other can.

A Yes. That's about three hours apart. Yes, uh-huh, something like that, because I spent about two hours up at Annette.

Q So during what time were you up at Annette's?

A I left – I was there approximately two hours.

Q From 4 to 6?

A Around that time. It was still light, [p. 42] yes.

Q So you got off work and you went to Annette Drennon's and stayed a couple hours.

A I spent a couple – I spent about 10, 15 minutes in the house.

Q In Annette's house.

A No, Ms. Brooks's house.

Q Then where did you go?

A Up to Annette.

Q And you stayed up there a couple hours.

A Yes.

Q And then you came back to Ms. Brooks's house.

A Yes.

Q During that whole time you had part of a quart and one other can of beer.

A Yes.

Q And who was your friend that was with you?

A Alvin. I met him on the job. Worked for Mr. Clopton.

Q What's his name?

A Alvin.

Q Can you spell it?

A A-L-V-I-N.

* * *

[p. 44] with Alvin apart from getting with Clopton?

A No, I don't.

Q Have you seen him since them?

A Came over one time and I lost contact with him.

Q Did anybody get on to you for bringing Alvin home with you?

A I think Ms. Brooks, she didn't like it but everything was all right. I beg her pardon. She didn't want

men to come in the house, with me bringing alcohol in the house, the kids there.

Q Did she tell you she didn't like that?

A Yeah, she told me. I said, "I beg your pardon."

Q You just apologized and that was the end of it?

A That's the end of it. Me and her talk. That's the end of things.

Q So Alvin didn't know any of the other family.

A No.

Q Did Alvin go back up to Ms. Annette's with you?

A He dropped me off there.

Q Then went on his way?

[p. 45] A Right.

Q So the total time he was out there was he brought you home and stayed a few minutes and –

A Approximately 15 to 20 minutes.

Q Then on the way out of Haynes Meade he dropped you up there at Ms. Annette's.

A Yes.

Q And went on his way.

A That's correct.

Q And you've seen him about one time since then?

A Yeah. I think at the funeral he – he came over about twice. That was about it.

Q So after Ms. Helen Brooks had said she didn't like you bringing that fella in there and you said you were sorry or begged her pardon, did anybody else have anything to say to you about bringing Alvin in with you?

A That was it.

Q Did Jacques get into it with you over that issue?

A I have no idea about that. I wouldn't know.

Q She didn't say anything to you or want to fuss with you about it?

[p. 46] A No, not to my knowledge. I wouldn't know.

Q What time of day was it when you last took a drink of alcohol?

A I was up there washing the car up at Annette's. It be about, I'd say around, about 5, 5:30.

Q 5:30?

A I'd say approximately that. I'm not for sure. Wasn't checking the time.

Q Do you know what time it was that you gave a blood sample to test your alcohol content in your blood?

A I remember the time the police brought me down to the precinct because I ran and got a pack of cigarettes. I sit there about 9:30 at General Hospital.

Q So it had been about four hours since you had anything to drink when you gave the blood sample.

A Yes.

Q How did the horseplay start between you and Jacques Brooks?

A She had called up to Annette house otherwise I still be at Annette house. She called and she said "Poo", JaSaundra, was down there crying. I went home. I went to see what was wrong. I thought –

* * *

[p. 48] house, what happened?

A I got in the house, I went in, he wasn't there. I walked toward the kitchen and that's when – I said something to Jacques and she – I hand to turn around and she hit me in the eye.

Q What did you say to her?

A I don't recall. I don't even know.

Q Was it something about your friend that you had brought in, Alvin?

A I don't recall.

Q But whatever it was you said, she hit you in the eye.

A We play like. Sometimes she just flip up her hand. I laughed and look back and she flip her hand otherwise she wouldn't have done it.

Q So you weren't able to block her from hitting you.

A My back was turned. I turned towards her and it was like a little flip. Already got a bush in my eyes from the get-go, from a couple days before that.

Q You got a what in your eye?

A A bush. Cutting bushes.

Q Just got poked in the eye with a limb or a twig or something.

[p. 49] A Uh-huh. She could have been teasing about that. I really don't know. I turned around and she poked me in the eye. It flipped like. I had already been hit with the bush, yes.

Q Hit you in the same eye.

A Yes.

Q Did that make you mad?

A I don't get angry.

Q Don't get angry? Have you ever gotten angry in your life?

A Oh, yes. Who don't?

Q That's a good question. Well, was she angry when she hit you?

A I didn't think about it. I thought it's a playful thing.

Q You thought she was just playing when she hit you in the eye?

A I didn't have my eye on it. I turned around. It could have been an accident. She couldn't hit me that hard. She flipped.

Q Who was present when she hit you in the eye? Who was there?

A Present around in the area? I was going into the kitchen. I don't even recall.

Q And you don't remember what you said to

* * *

[p. 52] A No. The knife I throwed back, I don't think it had a wooden handle. I gave it to Helen. It was a kitchen knife.

Q How long a blade did it have?

A It was a butter knife.

Q How long a blade did this butter knife have?

A A butter knife. I don't know, I ain't never measured that, sir.

Q You know how long six inches is. Was it more or less than six inches?

A I wasn't paying attention. I know it was a short knife. Could have been a butter knife, could have been a toast knife, jelly knife. I took the knife from her.

Q Did it have a shiny blade or a dull blade?

A It was shiny.

Q Did Jacques ever say anything to you during this time?

A She was too slow. I took the knife and me taking the knife, she laid on the floor. Then Helen came though and said, "You all cut that noise out. You all play too much. I'm going to call the police."

I left. I took on off through there and

* * *

[p. 55] Q And you already had the knife away from her by then?

A I got the knife. I seen how she was reacting. That was all there was.

Q Did she struggle with you to keep the knife?

A Shoot, no. Thee wasn't no struggle. I told you.

Q Which hand did she have the knife in?

A In her right.

Q Do you remember her grabbing the blade of it with her left hand to try to keep you from getting it away from her?

A No, I don't remember.

Q And you don't remember seeing that she had cut her hand?

A No, because Helen came in and said, "You all get up, I'm going to call the police."

Q Who all was present at the time you took the knife away from her?

A Helen I believe was because I threw it in the sink, I gave it to Helen, one. Maybe Tequila came back there. I don't know. I just get the knife from her. I was tired of playing. I had been working all day. I was trying to get it away from her.

* * *

[p. 60] to the basement.

Q So the last time you saw the knife was when it went in the sink.

A Yes.

Q And you did not see the knife again that night.

A No more.

Q All right. After you all got up from the kitchen floor and you went downstairs, what's the next thing that happened?

A She came downstairs.

Q And what did she say?

A She – I thought she was playing. She running downstairs. I ran – I picked up a bicycle. Maybe she –

Q So were you holding the bicycle?

A She couldn't pick up a tricycle.

Q Were you kind of holding it between you and her?

A The pool table, running around the pool table, just playing. I say, "Well, I'm getting tired of this. I put the bicycle up, maybe she'll leave. Tell her to ride the bicycle." That's in my mind. Give her something to do because I trying to get out on a date.

* * *

[p. 66] Q You weren't planning on teasing her as she went up the street.

A No. Helen had stated – she was taking her up to Annette's house. That's my niece. She walk down the street by herself in the condition she in. Would you prefer that?

Q So if somebody says that you were planning on teasing her as she went up the street, that would be wrong, wouldn't it?

A Yes, they could say that. They would be wrong. I wasn't planning on teasing her. I was trying to see her safety while she was going.

Q And she had said she was going up to Ms. Annette's.

A No. Helen had said, I guess she took – and Jacques was going up there. I guess Jacques got tired of chasing me, frustrated.

Q She was frustrated?

A Possibly.

Q Why would she have been frustrated?

A Anybody you chase and playing like that, you know, she had to – I didn't know. I wasn't looking at her face because I just running and playing.

Q When you saw her going up the street, where did you think she was going?

* * *

[p. 69] Q Where was the police car when you first saw it?

A Approximately 25 feet from the mailbox.

Q So you didn't see it coming down the street, it was – was it already stopped when you first saw it?

A It was already stopped.

Q And so when you first emerged from the bushes and looked up that way, what did you see exactly?

A I seen the police car, I seen my niece.

Q Standing by the car?

A Yes.

Q And which direction was she facing?

A She was facing the direction – give me a map. Haynes Meade run north or south?

Q You don't have to tell me the compass point. Was she facing the police car or was she facing forward or backward or what?

A She was on the side of the police car near I'd say the divider and she was slightly turned.

Q All right.

Q Let me demonstrate it to you. I can show you better than I can tell you. Okay. This is the police car (indicating). And she was about like this

* * *

[p. 71] A No. She had been close because the arresting officer –

Q After the shooting.

A When the book went up, I seen flashes inside over the driver's seat.

Q Do you know where Tequila Brooks was at the time they were – right before the shooting?

A No. Tequila was gone, she was gone and I'm trying to wondering where she was going to be – I didn't know this was going to happen. It was shocking.

Q Did you hear Officer Sneed say anything at any time before the shooting?

A I didn't hear no communication, period.

Q So you didn't hear anything Sneed said, you didn't hear anything Jacques said.

A That's right.

Q And you were what did you say, 20, 25 feet?

A Yes.

Q Is there a ditch or a gully in front of Dr. Thornton's house?

A It's a gully. It's a – I don't know how you put it. It's something like a gully, yes, you could call it.

Q If you were standing in it, how keep down

* * *

[p. 73] Dr. Thornton's house.

A It was parked there when I came to the driveway.

Q It didn't happen in front of Ms. Helen's house, it happened in front of the neighbor's house.

A Twenty-five feet from the mailbox where I was standing.

Q And how many shots did you say you heard?

A I seen 3 to 4 shots, flashes. I heard the shot, too.

Q You heard them and you saw muzzle flash, as well?

A Yeah, right where I was standing.

Q How long a time elapsed from the first shot to the last shot?

A It's automatic.

Q Just as fast as it could go?

A Pow, pow, pow, pow, pow. The guns in Vietnam didn't shoot that fast.

Q There wasn't any pause between the first shot and the next one?

A M-16 going off rapid fire.

Q It was just like that, that fast?

A Yes.

MR. HILDEBRAND: Just calm down

* * *

[p. 84] concentrating.

Q Did anybody ever tell you that he said anything about having to shoot Jacques?

A I wouldn't know.

Q No one has told you anything about that.

A Oh, yes. My sister stated that he said he had to kill that black bitch.

Q Did she hear that or did somebody tell her that?

A She probably heard it. I tried to get around the car. Helen came out. The officer was so frightened. He was frightened. He would kill his mama that day.

Q So at the time of the shooting you were looking directly into the car.

A Yes.

Q Pretty much looking through the windshield from head-on, is that where –

A Yes. It's from the mailbox. No more than 25 feet away.

Q Did you see your niece, Jacques Brooks, pick the knife up in her left hand like she was wielding an ice pick?

A No.

Q Did you see her make any agressive

* * *

[p. 84] A No.

Q Do you know what kind of book it was that Officer Sneed had?

A No, I don't.

Q I think you said it could have been a tablet or a book or clipboard maybe?

A It went up and the fire came out. I wouldn't try to read a book at that time. I don't think so.

Q As the shots were being fired, I think you showed me this a minute ago but we didn't get it down for the court reporter, did she spin to her left?

A It would be to her left, yes.

Q Counterclockwise, opposite the way a clock's hands would go.

A Right.

Q Did you hear her say anything after she was shot?

A No.

Q Did you observe any movement on her part after she went down?

A She was dead on the spot. When I tried to return to the officer, she was dead. I could look around and tell she was dead. I wasn't sure. I know she was lifeless.

* * *

[p. 88] Q Was there ever any accusation that you had harmed your kids in any way?

A No.

Q He ordered you not to see your kids just because you had been criminally charged?

A Yes.

Q And Mr. Swope, you earlier indicated that you wore glasses; is that correct?

A Yes. Driving.

Q I'm sorry?

A Just for driving.

Q You wear glasses to see at long distances?

A Yes.

Q Were you wearing glasses the night this event occurred with your niece?

A No.

Q Mr. Swope, do you have any kind of physical impairments like a speech impediment or any problems with you ears?

A I can't – well, my vocabulary, I don't, you know, get the words out like I want to but for spelling and writing, it's all right.

Q Do you have any problem with your ears?

A I can't hear too good sometime.

* * *

[p. 94] anything.

A Nothing – got rid of us. We were trash.

Q But you do have some problems from time to time particularly with your hearing; isn't that correct?

A Yes. I can read your lips. I can read lips.

Q Since you have that, does that, in your opinion here, does that have any relationship to the noise and furor of battle?

A No. I don't know. I don't know. I wouldn't –

MR. CHARLES: I'm going to object to the question. I don't understand your question.

MR. HILDEBRAND; It's simple. You know, when you have a battle you have a lot of noise and a lot

of firing, you know. My question is very simple, does he think that it affected his hearing.

THE WITNESS: I can read lips. I can't hear sometimes.

MR. CHARLES: My objection was I didn't understand your question. Now I do understand it.

MR. HILDEBRAND: Okay, Jim. Sorry.

MR. HILDEBRAND:

Q Did you serve anymore in the Reserves in

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

HELEN BROOKS, etc, et al, Plaintiffs, vs. OFFICER WILLIAM SNEED and METROPOLITAN GOVERNMENT OF NASHVILLE, DAVIDSON COUNTY, TENNESSEE, Defendants.	)	No. 3-90-0917

DEPOSITION OF:

FREDDIE D. SWOPE

MARCH 23, 1993

APPEARANCES

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* * *

[p. 11] Q. Is that right?

A. That's correct.

Q. Now, what education have you had? Did you graduate from high school?

A. Yes.

Q. Where did you go to high school?

A. Lakeside High in Decatur, Alabama.

Q. Where in Alabama?

A. Decatur.

Q. Decatur?

A. Uh-huh.

Q. And did you also go to Tennessee State at some point?

A. Yes.

Q. And did you also go to Washington International College?

A. Yes.

Q. And that's in Washington, D.C.?

A. That's correct.

Q. Do you have a degree from that college?

A. Associate's, yes.

Q. Associate's Degree. Do you wear glasses ever?

A. I wear glasses for driving, that's it.

Q. So, it's not for reading, it's for

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[p. 35] Q. I'm talking about, Mr. Swope, when you came back from Annette's. You didn't leave after that, did you?

A. She was saying something. I don't know what she was saying. And I said something.

Q. Well, what did she say?

A. I don't recall.

Q. Do you recall whether she was fussing at you about your bringing Alvin in?

A. She was standing there by the stove there. She was saying something and kind of brushed me and I said something, then she went towards the sink.

Q. Well, I want to know what you said.

A. I don't recall what I said.

Q. Well, was she angry or happy?

A. I thought she was going in the stove to get something because she said, "You need to come on and eat and be careful – I was outside and she called about two or three times. I thought she was outside and I stayed there for a while.

Q. Did she hit you in the eye?

A. She kind of brushed my eye, yes.

Q. Did she mean to do it?

A. I don't think so. I was pretty close to her.

[p. 36] Q. Well, how was it you let her hit you in the eye if she was so close?

A. I was just standing there and she was – she was at the stove. I thought she was going in the stove. I just standing there and she was saying something but I wasn't paying no attention no way. Because as I got there and Vick wasn't there and I said something pertaining to Vick. I don't recall what I said.

Q. Who is Vick?

A. Robert Kirk.

Q. What did you say about Mr. Kirk?

A. I don't recall.

Q. Well, were you and Jacques sort of talking back and fourth at each other?

A. It was brief what I said to her.

Q. What was it about? What were you saying something about?

A. I'm not sure. I think it was pertaining to Vick. I said, "Where's Vick?" Or something like that, to that nature. I'm not sure.

Q. And then Jacques hit you in the eye?

A. She throwed her hand up and brushed – you know, she was standing there, did like that (indicating). She had her hand on the oven as you go [p. 37] into the door; there's an oven there.

Q. So, her hand came from the oven up to your eye?

A. Right. She was standing at the door there.

Q. And it was quick enough that you couldn't block her from hitting?

A. I was just standing there. I was asking her a question. Her hand – the oven is up above the door – you have to reach up.

Q. Reach up?

A. Yes, it would be up in the wall unit.

Q. So, her hand came from the oven and hit you in the eye and you couldn't react to it?

A. I wasn't paying any attention to her.

Q. Were you looking at her?

A. No, I don't think I was looking at her at the time, I would say, I was looking back. I was looking seeing where Vick was and the kids coming through the house.

Q. Well, did it hurt when she hit your eye?

A. No.

Q. Then why did you have to get eye drops to put in it?

A. My eye had been prior hurt cutting [p. 93] bushes out there. She hung a limb for me. That happened there.

Q. Another day, that was an earlier day?

A. That was prior to that, yes. She released a bush on my I was cutting.

Q. So, your eye had already been injured?

A. Yes.

Q. And then when she hit you in the eye, did that aggravate the previous injury?

A. Yes, kind of irritated it.

Q. Did it hurt?

A. Oh, it was already kind of sore.

Q. But it did hurt, didn't it?

A. It kind of stung, but it didn't hurt. It was already sore.

Q. Did she hit you on purpose?

A. I wouldn't know was she coming from the – whether she taking her hand off of there or what.

Q. What did she say when she hit you?

A. I don't recall. She was saying something. I don't recall though.

Q. She was saying something about you brought Alvin in, wasn't she?

A. I don't recall.

Q. After she hit you in the eye, did she [p. 39] apologize?

A. No.

Q. Were you teasing her right before she hit you?

A. I was pertaining to Vick Kirk. I was asking them why or something. I'm not sure.

Q. Did somebody put eye drops in your eye?

A. Tequilla, I believe.

Q. Do you know the result of the blood test you took?

A. Never heard of it.

Q. Never did hear?

A. Huh-huh.

Q. After Jacques hit you in the eye and after Tequilla put eye drops in, what's the next thing that happened?

A. Next thing that happened, I think – let's see. It would have had to be beforehand. I think Jacques went to the sink and she grabbed some type knife, I don't know, and I run around and grabbed her and took the knife from her.

Q. After she hit you in the eye did you get eye drops put in your eye then or after the scuffle over the knife?

A. I think I was holding her down when she

* * *

[p. 44] wasn't she?

A. She wasn't mad, couldn't have been, but as far as my knowledge, she wasn't.

Q. How long was Jacques on the floor?

A. Brief.

Q. How many seconds: How many minutes?

A. I wouldn't recall. You know, I just took the knife out and left it in the sink.

Q. Did Helen Brooks take the knife out of your hand?

A. No.

Q. You threw it in the sink?

A. Yes.

Q. Were you still on the floor when you threw it in the sink?

A. Yes, I think I was getting up at the time, you know, and walking over there and throwing the knife.

Q. When did Tequilla put the eye drops in your eye?

A. That was – I think I was semi-holding Jacques, I believe. And Helen came through there.

Q. So, you held her on the floor long enough for Tequilla to go and get the eye drops and put some in one of your eyes?

[p. 45] A. I hollered, I said, "Tequilla," she knew we was playing, you know, "she hit me in the eye, I need the eye drops." Then I thought really, you know, Jacques' just playing.

Q. Was your eye hurting you when you had her on the floor?

A. No. I was using that technique to try to keep Jacques and keep playing, you know.

Q. You wanted her to keep playing or you – which was it?

A. Keep on playing, you know.

Q. I thought you wanted her to stop playing.

A. Stop her from playing, either one.

Q. Did you want her to keep playing or stop playing?

A. Stop playing from that – using a technique to keep from playing.

Q. And you didn't get angry with her for hitting you in the eye?

A. No.

Q. Tell me everything that Jacques Brooks said to you when you were in the kitchen.

A. I don't recall what she was saying.

Q. Tell me everything you said to her when [p. 46] you were in the kitchen with her.

A. I was saying something pertaining to Vick Kirk. I don't recall.

Q. Was it something to tease her about?

A. No.

Q. How do you explain her different reaction this time, going and getting that knife? What was different?

A. I don't know.

Q. Tell me everything that Helen Brooks said when you and Jacques were in the kitchen.

A. She just came around and said, "You all cut that playing out, junk out, I'm trying to rest here."

Q. Is that all she said?

A. All I remember because I immediately went on out.

Q. What did Tequilla say?

A. I don't even recall.

Q. Do you remember whether she said anything?

A. No, I don't.

Q. Which hand did Jacques have the knife in?

A. I don't recall.

[p. 47] Q. Which hand got cut?

A. I don't know that.

Q. Did she grab the blade with one hand to keep you from getting the knife away from her?

A. I don't know. I just took the knife away from her.

Q. Was Jacques angry with you after you let her up?

A. No, I left her and went on down to the basement. I was getting rid of some old stuff down there is what I was doing.

Q. Did Jacques' blouse get torn during that scuffle in the kitchen?

A. I didn't notice.

Q. Did it get unbuttoned?

A. I didn't notice that. I was just playing, you know. That's all. I was playing.

Q. Did Jacques get either that knife or another knife and come downstairs with it?

A. I have no knowledge of that. I didn't see no knife as I went down there.

Q. Did she come back downstairs?

A. She came downstairs, yes.

Q. And you don't know whether she had a knife in her hand or not?

* * *

[p. 48] A. No.

Q. What happened when she came downstairs?

A. When she came downstairs I was trying to run around the pool table and a little old bike was in my way. I almost tripped over it, you know, and I picked it up.

Q. Why did you pick the bike up?

A. When I was running around, it was my way and I just grabbed it up because prior to that, two or three

bikes were down there. I just picked it up. I had room to move it around the table.

Q. Why didn't you just shove it out of the way?

A. There's stuff all over – there's two or three bikes down there.

Q. Mr. Swope, the fact is, she had a butcher knife and you were holding that bike up to protect yourself?

A. I didn't see her with no knife.

Q. Has anybody told you she had a knife when she was down there?

A. No.

Q. Was she angry when she was chasing you around the pool table?

A. No. I didn't think that. I thought she

* * *

[p. 55] to keep teasing her as she went up the street?

A. Never told anyone.

Q. Did she say where she was going?

A. No, she didn't say nothing, just turned around and went up the street like I stated.

Q. Where did you think she was going?

A. I didn't know where she had went until I seen her going up the street.

Q. Regardless of what you personally observed, you know, don't you, that she had a knife in her hand when you were in the basement?

A. No. I didn't see her with no knife in the basement.

Q. I'm not asking you what you saw. I'm asking you what people have told you.

A. Yes, that's what I was told, yes.

Q. And you know, don't you, from what people have told you, that she had a knife when you were going around the barbecue grill in the back yard?

A. That's what they told me.

Q. And you know that she had a knife in her hand when she was in the front yard chasing you?

A. I never saw her with no knife.

Q. I'm still asking you what people have told you.

* * *

[p. 58] Q. So, the first knowledge you had about the police were when you saw the police car?

A. Right.

Q. And it was dark, wasn't it, when the police car came down the street?

A. It was dark at the time I saw the police car, yes.

Q. And did the police car have its headlights on?

A. Yes.

Q. Why did you come up by the mailbox? What were you going to be doing?

A. I came – why I came to the mailbox, I was seeing where Jacques had went to, or had gone, you know.

Q. Just wanted to see where she was going?

A. Yes. She had disappeared and I wanted to look up the street to find out where she was going or went back.

Q. Do you think Jacques had gotten frustrated because she couldn't catch you?

A. She plays – she plays so much – I didn't know. I wouldn't know because after I had laughed at her, she had turned around and took off. And I was catching my breath there for a while.

* * *

[p. 65] A. She didn't elaborate on it because she was talking – her Aunt Helen was talking.

Q. So, you don't have a clue what was said between them, right?

A. Right.

Q. Is that right?

A. That's right.

Q. Which eye did Jacques hit you in when you were back up in the kitchen?

A. The one that was hurt. I believe it was my right eye the bush had caught when I was cutting.

Q. Which hand did she hit you with?

A. I don't even recall that. The one that was near the basement door. It had to be the hand she had with the handle on the stove. I don't know which one at the door.

Q. You can't reconstruct it in your mind which hand she hit you with?

A. She's facing the door, the stove is this way, so it had to be with the right.

Q. Was she facing you when she hit you?

A. No, I was standing there. I wasn't paying no attention.

Q. And you never saw, out there in the yard, you never saw Jacques move her hands in any way?

[p. 66] A. No.

Q. Never saw her point?

A. No.

Q. Never saw her make any aggressive movement towards Officer Sneed?

A. No.

Q. And you saw her the whole time?

A. The whole time I came up. At that point, it was just a few seconds until it happened.

Q. Tell me what you saw now. Be very detailed so I won't even interrupt you.

A. Okay. At that point, I remember we merged to the mailbox. I was at least ten to fifteen feet from the car. And Jacques was standing, like you say, adjacent about three – two to three feet from the car. And I had seen a book or whatever, it went up over the steering wheel then the shot – it was within ten seconds I believe. Just bang,

bang, bang and then he jumped out of the car, wheeled around and he had the gun on me when I rushed him.

He said, "Get back. Get back. I'll kill you." Then Helen came from the other side to try to get to Jacques. And he was on the ground trying to pick up something, Officer Sneed was.

Q. Officer Sneed was?

* * *

[p. 68] he was sitting under the steering wheel.

Q. Does that mean he was sitting square in the seat facing out the windshield?

A. Within ten seconds, a book went up, I couldn't tell. I just seen the flashing from the gun. It was from the steering wheel position.

Q. I don't want to beat this to death. Do you know whether he was facing forward or whether he was facing out the window, or do you not know?

A. I wouldn't know.

Q. You saw a book or something –

A. Yes, sir.

Q. – come up?

A. An object, yes.

Q. Could you see whether he was holding it in one hand or both hands?

A. Only thing I know is I seen book, and I seen the flashing from the weapon.

Q. What do you think he was doing with the book? Have you thought about that?

A. When the book went up and the shots were – I really couldn't tell you that.

Q. How many shots were fired?

A. It was rapid fire. I'd say three to five shots.

[p. 69] Q. Was there any pause in between the shots?

A. No, automatic.

Q. Just as fast as they could be fired?

A. Yes.

Q. When you approached the police car after the shots were fired, were you moving fast or were you moving show?

A. I was moving fast, right.

Q. Were you upset?

A. I was telling him, "You done shot my niece, shot my niece." I was trying to bend down and help her and he said, "Get back. Get back. I'll kill you." Because he had stood over her with the gun then and then he got on the ground, something like tnat. And he said, "Get back. Get back. I'll kill you."

Q. Were you upset?

A. Things were happening so fast, I – they were happening so fast.

Q. But, were you upset?

A. I couldn't say.

Q. What did you say to Sneed?

A. I didn't say anything to him. I said, "I need to get to my niece." That's what I said, "Let me get my niece. You done killed my niece."

* * *

[p. 71] Q. Did it occur to you that somebody had called the police because of the problem you and Jacques were having?

A. I had no knowledge anybody called the police.

Q. I know you didn't have any knowledge of it, did you think maybe that's why the policeman was there?

A. No. I haven't thought of that.

Q. Didn't think about that? How many seconds elapsed from when you first saw the police car to when the shots were fired?

A. Approximately – I would say about ten seconds. It was quick.

Q. Did you see the whole thing? Were you looking at the police car and Jacques the whole time from when you got up there?

A. I seen – from that point, perhaps so.

Q. Could you have looked away at any time?

A. I don't never recall because it happened so fast.

Q. How deep is the ditch over there in front of Mr. Thorton's house?

A. I'd say approximately one to two and a half feet, probably.

* * *

[p. 77] Q. Were you wearing your glasses that night?

A. No, I don't even wear glasses when I'm driving. I didn't have a car at the time.

Q. And you told us that you don't have any hearing problems.

A. That's correct, as far as my knowledge.

Q. Have you ever told anybody you had a hearing problem?

A. No.

Q. When Jacques had started up the street before the police car got there, were you calling out to her or hollering at her?

A. State that again.

Q. Before the police car arrived after she stopped chasing you around in the front yard and started up the street, did you call after her, holler at her?

A. No.

Q. Has the Brooks family blamed you in any way for what happened out there?

A. No.

Q. They haven't been upset with you?

A. No, they haven't said anything to me about it. I go there regularly to eat and I go over

* * *

[p. 92] Q. Could go outside through the front door but that's the other door. Which child came downstairs?

A. I don't even recall.

Q. Had Jacques Brooks ever chased you with a knife before?

A. No.

Q. Had she ever had a knife with you while you scuffled in the house before?

A. No.

Q. Had you done anything or said anything to Jacques Brooks that was different from anything you had ever said or done to her before that evening?

A. No. She called up to Annette Drennon's house. Teasing about Robert – Vick Kirk. You know Vick Kirk is down here. That's the reason I went back to the house.

Q. So, you have no explanation of why she had a knife?

A. No.

Q. And even after you took it away, she went and got another knife. You have no explanation for why she behaved like that?

A. I mean, I didn't see her with another knife when she came down in the basement. If she did, [p. 93] then I don't know why.

Q. You have no explanation?

A. No.

Q. Let's – eventually you get out in the front yard and Officer Sneed pulls up to the house next door and Ms. Jacques Brooks goes over to Officer Sneed and you come from around the bushes to where you can see? You come further up front towards the road so you can see because the bushes –

A. Come to the mailbox, yes.

Q. The bushes and Ms. Helen Brooks' house, the house where you were living, was blocking your view where you were in the front yard? Is that why you went on up to the mailbox?

A. No, the house wasn't blocking the view. It's the bushes there.

Q. The bushes were blocking it?

A. Yes.

Q. And you see Jacques Brooks standing by the police car. You can't hear what is said?

A. No.

Q. You can't see a knife in her hands?

A. No.

Q. You hear gunfire?

A. Yes.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES Q. BROOKS, et al.,

Plaintiffs,

vs. Case No. 3-90-0917

WILLIAM SNEED, et al.,

Defendants.

DEPOSITION OF:

TEQUILA SOMEKA BROOKS

June 11, 1991

ASSOCIATED REPORTERS
221 Fourth Avenue North
Nashville, Tennessee 37219
(615) 255-3632

* * *

[p. 25] Swope's eyes yet?

A Yes.

Q Tell me how that happened. Had they stopped, they had stopped when you first came in?

A When I first walked in they weren't wrestling, they were just standing up communicating back and forth.

Q And you can't tell me anything they said.

A No.

Q Then what happened?

A Then they had the knife and he was trying to take it away from her and that's when they was wrestling around on the floor.

Q Let me stop you. When did you put the eyedrops in his eye?

A When he was standing up.

Q Okay. All right. Do you say anything to anybody?

A No.

Q So you get the eyedrops in his eye and then what happens?

A Then they started wrestling.

Q How do they wind up on the floor?

A When he was trying to take the knife away from her.

[p. 26] Q So they fall to the floor somehow?

A It's not fall. She just kind of lost her balance and he was easing her on to the floor.

Q Did he trip her?

A No.

Q Is he on top of her on the floor?

A Yes.

Q Then what happened?

A Then he took the knife out of her hand and that's when she cut the inside of her hand and he was taking the knife from her.

Q Did she grab the blade, did you see?

A Yes.

Q What was he trying to do, was he trying to pry her fingers off the handle or something and then she grabbed the blade with her other hand?

A Yes. Yup.

Q Does he get the knife away from her?

A Yes.

Q Okay. Then what happened?

A He got up and ran into the living room.

Q With the knife?

A No. The knife, he threw it in the sink.

Q Is he saying anything?

A I don't know.

* * *

[p. 28] phone, I mean did she call people up on the phone?

A Family members.

Q Did she? Okay. So she called the operator again and did Mrs. Helen Brooks hang it up again?

A Yes.

Q Second time. Then what happens?

A Then she hangs up the phone and she started running after Freddie but she had picked up the knife again out of the sink.

Q When is the first time that you had any idea of why Jacques Brooks was angry with Freddie Swope?

A When I kept hearing something about a man.

Q And you're hearing that from Jacques Brooks?

A Yes.

Q When she grabs the knife again, does she say anything? Does she threaten Freddie Swope?

A No.

Q Does she say anything at all?

A She asked him was he scared.

Q She asked Mr. Swope if he was scared?

A Yeah.

[p. 29] Q What did Mr. Swope say?

A No.

Q He said he wasn't scared?

A No.

Q Did he say that as he kept running?

A No, he had stopped.

Q He had stopped. Where is he?

A In the living room.

Q Is this the half living room that you've drawn or another part of the house?

A Well, it's the dining room.

Q He's in the dining room?

A Yeah.

Q After she asked him if he was scared and he said no, then what happens?

A Then he was going downstairs because that's where he stays.

Q He lives downstairs?

A No, he just stays downstairs. He stays in the den, it's not a room, its just a den.

Q Does he have another bedroom where he stays in the house?

A No.

Q Did he live at the house at that time?

A Yes.

[p. 30] Q So did he sleep downstairs, I guess, is my question?

A Yes.

Q Okay. I'm sorry. So did he walk downstairs or did he rundown stairs?

A He ran down the steps.

Q Was Jacques Brooks running after him?

A She was right behind him.

Q With the knife?

A Yes.

Q How was she holding the knife?

A Down to her side.

Q Like this (indicating)?

A Like this (indicating).

Q Like that. Did she have it in her right hand?

A Yes.

Q Is she saying anything?

A She just kept asking was he scared.

Q That's the only thing she said?

A That I know of.

Q And is Mr. Swope saying anything as he's running down the stairs?

A Yes.

Q What was he saying?

[p. 31] A "Let's stop."

Q Do you follow them downstairs?

A Yes.

Q Tell me what you – tell me – are you running after Jacques Brooks?

A No.

Q Are you running downstairs?

A Yes.

Q Tell me what goes on downstairs.

A They run around the pool table and then my mom was already downstairs.

Q Mrs. Helen Brooks?

A Right. And she opened the back door and they run out the back door.

Q Had she gone downstairs first?

A She was right behind all of us.

Q Oh, all right. Did she say anything to them when they were downstairs?

A She kept telling them to stop.

Q Did Mr. Swope ask her to open the back door?

A No.

Q Do you follow them outside? Just tell me what you did.

A Went to the door, the back door.

[p. 32] Q Does it open straight out from the basement to the backyard or wherever?

A Yes, and they were running around the barbeque grill.

Q Is that out in the backyard?

A Yes.

Q What is said now by either one of them?

A My mom is still saying stop and Freddie is saying stop.

Q Is anybody swearing?

A No.

Q Is Ms. Jacques Brooks saying anything?

A No.

Q Is there anyone else that you know of who can see this there?

A My sister.

Q JaSaundra?

A (Witness nods head in the affirmative.)

Q So she's gone downstairs, as well?

A Yes.

Q I'm sorry, was it Jacques Brooks' left hand that was cut when she grabbed the knife?

A I think so.

Q You think so? Okay. What happens next?

A Then me and my sister go back up the [p. 33] steps and out the front door and then they're coming up the driveway.

Q So they're running around to the front of the yard?

A Yes.

Q How about Mrs. Helen Brooks, where is she?

A At the gate.

Q So she's following them out back?

A Yes.

Q What happens next?

A Then they come up to the front yard.

Q Freddie Swope and Jacques Brooks.

A Right.

Q And?

A And they run around the little flower bed we have in the front yard.

Q Okay.

A And then –

Q Nothing said by either one of them?

A My mom says that she'll take Freddie up to my other aunt's house, Annette, that's four houses up.

Q What's that aunt's name, please?

A Annette.

[p. 34] Q Does Jacques Brooks say anything?

A That she'll go.

Q That she will go?

A (Witness nods head in the affirmative.)

Q To your aunt's house?

A Right.

Q What does Freddie Swope say?

A Nothing.

Q What happens next?

A She starts up the street and that's when the police car was at the top of the street.

Q So she's no longer chasing –

A No.

Q – Freddie Swope. And she has what, started walking to your aunt's house?

A Yes.

Q And it's at that time that a police car shows?

A Yes.

Q Where are you at that time when the police car first shows?

A In the street.

Q How far away are you from Jacques Brooks?

A I think 48 feet.

Q Have you measured the distance?

[p. 35] A Yes, but I can't remember.

Q That's fine. Maybe if we draw another picture. It might be a little more clearer.

If you would, just draw your house, just a square for your house and then a few more houses and show me where your aunt's house is and maybe I can get a sense of direction here.

A (Witness complies.)

Q Does the street turn or did you just run out of room?

A It curves.

Q It curves? Good.

Now, which direction does the police car come from, I mean on your diagram, from which way is it?

A He's up here (indicating).

Q And which way is he headed, just kind of draw an arrow so I can see which way his car is –

A He's coming down this way, down the street (indicating).

Q Does he have to go by your aunt's house to do that?

A (Witness nods head in the affirmative.) She's right on Whites Creek Pike.

Q So you turn off Whites Creek Pike?

* * *

[p. 38] Brooks had taken before she – after she quit chasing your uncle, how many steps had she taken before the police car stopped next to her?

MR. HILDEBRAND: From where to where, Jim? I don't understand myself.

Q After she stopped chasing Mr. Freddie Swope, how many steps had she taken? I assume toward her aunt's house.

A I don't know because she left our yard and went to the street pavement.

Q Did she walk up to the street after she quit chasing Uncle Swope, Freddie Swope, and then she started walking down the street?

A Up the street.

Q Up the street. I'm sorry. Towards Whites Creek Pike?

A Yes.

Q Did she still have the knife with her?

A Yes.

Q How was she carrying it?

A Down to her side.

Q Do you remember which hand she had it in?

A Right.

Q Right hand?

A (Witness nods head in the affirmative.)

[p. 39] Q Did you hear Freddie Swope say anything once Jacques Brooks quit chasing him?

A No.

Q Did you hear Jacques Brooks say anything other than, "I'll go"?

A No.

Q Tell me what happened next, what you remember.

A Then the police car came down and stopped where she was. Then he asked her if that was 1613 Haynes Meade Circle.

Q Go ahead. What did she say?

A "Yes."

Q What's the next thing that he said?

A Then he asked what was the conflict and then she said that, "Her and her uncle were fighting."

Q Are those the words she used?

A Yes.

Q Did she say – just tell me exactly what she said again.

A "Her and her uncle were fighting."

Q Well, I assume she didn't say, "Her and her uncle." Did she say, "I'm fighting with my uncle"?

A "Her and her uncle."

Q She said, "Her and her uncle are [p. 40] fighting." Okay. What's the next thing you see?

A And then she takes the knife out of her right hand and puts it into her left hand and then she turns towards Freddie.

Q So let me stop you. Was she facing towards your aunt's house originally when the policeman pulled up?

A When he pulled up, yes.

Q And then she turns around and –

A Faces the car.

Q Faces the car.

A And he stops.

Q Okay. Then they start talking.

A Right.

Q And then she turns I guess what would be back towards your uncle or back towards your house.

A Left.

Q Turns left back towards your house and Mr. Swope; is that right?

A Yes.

Q Tell me what she said.

A She said that she was going to kill him because she was pointing at him.

Q She was pointing at him?

A (Witness nods head in the affirmative.)

[p. 41] Q With what hand is she pointing at him?

A Right.

Q And where does she have the knife?

A To her side on her left side.

Q Does she raise her right arm and point at him?

A Her right arm?

Q Yes.

A Yes.

Q And does she point her index finger at him?

A Yes.

Q And she says, "I'm going to kill him"?

A Yes.

Q You say you have measured how far it was from where you were standing to where Jacques Brooks and the police car were and it was 48 feet, you think?

A Yes.

Q Okay. So she says, "I'm going to kill him" and then what happens next?

A He says, "No, you're not." Then she says, "Yes, I am."

Q And what did the police officer say then?

A "No, you're not."

Q And go ahead, what happens?

[p. 42] A Then I look towards the house because my two cousins were still there and they were going to run out the house and I was trying to tell them to go back and then I heard the gunshots.

Q Could you give me the names of your two cousins again?

A James and Mario.

Q James and Mario?

A (Witness nods head in the affirmative.)

Q Did you see them out on the front porch?

A Yes.

Q Can you tell me how old they are?

A Now?

Q Yes.

A 6 and 9.

Q Is James 6?

A Mario is 6, James is 9.

Q Did you yell at them to go back into the house?

A Yes.

Q Did they do what you told them?

A Yes.

Q Did they turn around and go back in?

A Yes.

Q So when you're yelling at them and facing [p. 43] them that's when you hear the gunshots?

A Yes.

Q So you didn't actually see what Officer Sneed was doing at that time and you didn't see what Jacques Brooks was doing at the time that the gunshots went off.

A No.

Q What did you do as soon as you heard the gunshots?

A I looked back towards the car.

Q And what did you see?

A That she was on the ground.

Q Were all the gunshots over by then?

A Yes.

Q Okay. What's the next thing that happens?

A My uncle, Freddie, tried to go around the car and then he was – Sneed was getting out of the car and took his gun and told him to get back and then he got out and held the gun over her.

Q Over –

A Jacques and he got on his knees and he was fumbling around in the grass.

Q He was on his knees fumbling around in the grass?

* * *

[p. 71] A No.

Q Do you think she wanted him to be scared?

A No.

Q Can you describe this knife for me?

A It was an Old Hickory kitchen knife.

Q Is that the brand name, Old Hickory?

A (Witness nods head in the affirmative.)

Q Can you tell me how long the whole knife was, handle and blade?

A No.

Q Can you tell me how long the blade was?

A No.

Q After this scuffle on the kitchen floor ended and the knife was put in the sink, was Jacques more angry or less angry or about the same?

A About the same.

Q Do you know whether her blouse was torn during this scuffle?

A I don't know.

Q Was it a blouse that buttoned up?

A Yes.

Q Do you know whether it was buttoned?

A I don't know.

Q Was Freddie Swope doing or saying things to provoke Jacques at this time after she got up from

* * *

[p. 79] Q Did you ever see her holding the knife like you would hold an ice pick?

A No.

Q Could you ever see how Officer Sneed was sitting in his car, whether he was facing forward or whether he was turned to face out the driver's side window?

A No.

Q How deep is the ditch or gully that is right next to the street in the yard of 1615, that's Mr. Thornton's yard?

A I don't know.

Q Do you know what I'm talking about? Is there a ditch there?

A Yes.

Q If you stood in it, how far up your leg would it come? Would it come to your knee, to your mid thigh, your ankle?

A Your ankles.

Q How many shots did you hear?

A I don't know.

Q You don't have any idea?

A They were all at once.

Q Just as fast –

A Firecrackers.

[p. 80] Q There wasn't a shot or two and then a pause and then some more?

A No.

Q Just as fast as they could –

A Come out.

Q All right. How much time elapsed from the first shot to the last shot?

A I don't know.

Q Did you possibly out of the corner of your eye see any muzzle flash from the pistol?

A The fire?

Q Yes.

A Yes.

Q Did you catch that out of the corner of your eye?

A Yes.

Q How many muzzle flashes did you see?

A I don't know.

Q Was it daylight or dark at that time?

A It was just getting dark.

Q Are there street lights near your house?

A Yes.

Q Where is the nearest street light to where this encounter occurred?

A At the end of Mr. Thornton's driveway.

* * *

[p. 87] was doing fumbling in the grass?

A No.

Q How far away was his car from the beginning of the grass? You've got pavement and then I guess you've got a little gravel and then grass; is that right?

A I guess about two, three feet.

Q Did he seem to be looking for something?

A Yes.

Q And you don't have any idea what for, what he was looking for?

A No.

Q Did any family member undertake to warn Officer Sneed that Jacques had a knife in her hand?

A Did we what?

Q Did any of you try to warn this police officer that Jacques Brooks had a knife in her hand?

A No.

Q Can you tell me who the preacher was at Roger Heights Baptist at the time this incident occurred?

A Reverend Williams.

Q C.R. Williams?

A Yes.

Q And is he still the minister out there?

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES O. BROOKS, et al,	)	
PLAINTIFFS,	)	Civil Action
	)	No. 3:90-0917
vs.	)	
WILLIAM SNEED, et al,	)	
DEFENDANTS.	)	
	)	

The deposition of TEQUILA BROOKS, was taken before Marylou Y. Cross, Registered Professional Reporter and Notary Public at Large, on March 29, 1993, beginning at the approximate hour of 10:00 A.M., at 204 Metropolitan Courthouse, Nashville, Tennessee.

Taken by Notice, for the purpose of producing evidence and/or for discovery, pursuant to the Federal Rules of Civil Procedure.

[p. 19] A. Uh-huh (affirmative response).

Q. Okay. And did Jackie still have the knife in her hand?

A. Yes.

Q. Okay. Your grandmother said something about taking one or the other of them to your aunt's house?

A. Yes.

Q. Okay. Go ahead. What happened then?

A. And then the police officer – the car came down the street and he stopped. And Jackie was there right beside – well, right in front of the car – well, the front door of the car.

Q. Okay.

A. And she put the knife to the side of her. And he said, where is 1613 Hasting Circle? And she pointed to our house. And he said, well, what's the problem? And she said that if he didn't take her or Freddie to jail, that someone was going to get hurt.

Q. Say that again.

A. If he didn't take –

Q. Okay, Jackie is saying this to [p. 20] the policeman?

A. Um-hum (affirmative response).

Q. Give us that again.

A. If he didn't take one or the other to jail, that someone was going to get hurt.

Q. All right.

A. And then my two cousins, James and Mario, came out the door. And I looked in their direction, and then we heard the gun fire.

Q. So, you were -- you weren't facing the police car any longer; you were looking at your two cousins?

A. Yes.

Q. Where were they?

A. Coming out the front door of the house.

Q. Were sue still out in the middle of the street?

A. Yes.

Q. So you turned to your right, I guess – I would assume.

A. Yes.

Q. So you were not – you were not watching Jackie or the policeman, or the police [p. 21] car, when the shots were fired?

A. No.

Q. What did you do when you heard the shots fired?

A. I looked back towards the car, and he got out.

Q. He? The police officer?

A. The police officer got out and he put the gun down on her. And he was feeling around on the ground. And then he got back up. And grandmother and Freddie started walking towards Jackie. And he said, "get back, get back, or I will shoot".

Then Freddie tried to go around on the other side of the car, and he told them to get back or he will shoot. And then he got back in his car and then he didn't get back out until another police officer came.

Q. Okay. What did you do when he said these things.

A. I just stood there.

Q. Okay. Did you stay there until the other police cars came?

A. Yes.

Q. In the middle of the street?

* * *

[p. 60] Q. What would she do on other occasions, if she got enough of it?

A. Go in her room and close the door.

Q. Do you ever recall Miss Helen Brooks telling Freddie to stop teasing Jackie?

A. Yes.

Q. Would that be a frequent thing she would do?

A. No.

Q. How many times do you think you have heard her tell Freddie to stop teasing Jackie, apart from that night we are talking about?

A. Just a couple of times.

Q. Do you know which eye Freddie Swope was hit in, during the encounter in the kitchen?

A. No.

Q. Did you see that part of the encounter in which Jackie got her hand cut?

A. Yes.

Q. What part of her hand got cut?

A. Palm.

Q. All right. Crosswise, across

* * *

[p. 73] A. No.

Q. No headlights?

A. I don't know about the headlights, but there was no blue lights.

Q. It was dark – or close to dark – by that time; wasn't it?

A. Yes.

Q. Does that refresh your recollection about whether the headlights were on or not?

A. No.

Q. You don't remember?

A. Don't remember.

Q. Was the police car going fast or slow, as it came down Haynes Meade Circle?

A. Slow.

Q. How much time elapsed from when you saw it make the turn into Haynes Meade Circle and the time it stopped where Jackie was?

A. A minute.

Q. Did you hear any noise? Was there a siren on?

A. No.

Q. Did you hear tires squeal?

A. No

* * *

[p. 77] A. Yes.

Q. – she never switched hands.

A. I don't know.

Q. Did you see her switch hands?

A. Not that I remember.

Q. Could you see how Officer Sneed was sitting in his car; whether he was sitting facing forward, looking through the windshield, or whether he had turned his body, to talk to her out the driver's window?

A. Facing forward.

Q. Exactly where were you when you heard the shots?

A. In the street.

Q. But you weren't looking that way?

A. No.

Q. And you had started to do what?

A. To direct my cousins back into the house.

Q. And at the time the shots were fired, exactly where were they?

A. Coming down the steps, into the yard.

Q. Just coming off the porch?

* * *

[p. 78] A. Yes.

Q. And exactly where was Miss Helen Brooks, when the shots were fired?

A. Coming up the driveway.

Q. How far up the driveway?

A. Midways.

Q. Was she as far as the – where the front walk intersects the driveway?

A. Yes.

Q. Was she, in fact, right there at the – at that intersection of the sidewalk and the driveway?

A. Yes.

Q. And Uncle Freddie was where?

A. The mailbox.

Q. Do you know how many shots were fired?

A. No.

Q. Was there any pause between the shots?

A. No.

Q. Just as fast as they could be fired?

A. Like a firecracker.

Q. And did you see anything at all,

* * *

[p. 80] the police car stopped, to when you heard the shots?

A. A minute or two.

Q. Was it time for a long conversation?

A. A conversation. I don't know about long.

Q. How long a time elapsed, after the shooting, until the next police car got there?

A. Five minutes.

Q. What about for the fire engine to get there?

A. Ten.

Q. And then an ambulance came after a fire engine; is that right?

A. Yes.

Q. How long did it take for the ambulance to get there, total?

A. Maybe 15 or 20 minutes.

Q. Now, going back to this Old Hickory brand butcher knife Jackie had that with her when she went down the stairs.

A. Yes.

Q. Is that right?

[p. 81] A. Yes.

Q. And she had it with her when she and Freddie were going around the pool table.

A. Yes.

Q. And she had it with her when they went around the barbecue grill?

A. Yes.

Q. And when they went up the driveway?

A. Yes.

Q. And when they went around the flower bed in the front yard.

A. Yes.

Q. And when she went up the street.

A. Yes.

Q. Was Freddie Swope saying anything at all to Jackie Brooks, from the time they got into the front yard until the time she went up the street?

A. I don't know.

Q. Was he asking her to stop and leave him alone?

A. I don't know.

Q. Were you where you could have heard something, if it had been said?

* * *

[p. 86] Q. Did Freddie Swope undertake to warn him that she had a knife?

A. No.

Q. Did anybody undertake to warn him that she had a knife?

A. No.

Q. When Miss Helen Brooks and Freddie Swope started to approach Officer Sneed in the police car, immediately after the shots were fired, were they moving fast or slow?

A. At normal pace.

Q. Just walked on over?

A. Yes.

Q. They didn't rush over?

A. Well, Freddie did. Grandmother, she can't run because of her knee.

Q. But Freddie was moving pretty fast; wasn't he?

A. Yes.

MR. BROWN: That's all I have. Thanks.

MR. SAWYERS: I don't have anything.

MR. CHARLES: Let me ask you a couple more questions, please, Miss Brooks.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES Q. BROOKS, et al.,

Plaintiffs,

vs. Case No. 3-90-0917

WILLIAM SNEED, et al.,

Defendants.

DEPOSITION OF:

JASAUNDRA BROOKS

June 12, 1991

ASSOCIATED REPORTERS
221 Fourth Avenue North
Nashville, Tennessee 37219
(615) 255-3632

* * *

[p. 21] Q How long had that been since you got home, five minutes?

A Yes.

Q Does that sound about right?

A Yes.

Q What happened when you started crying?

A Nothing.

Q Nothing? What's the next thing that happened that you remember?

A I don't remember.

Q Don't remember? Well, did you hear your grandmother argue with your Uncle Freddie?

A No, she wasn't really arguing.

Q What was she doing?

A She just asked him how come he brought that man in the house and he say he was sorry.

Q And is that all they said?

A Yeah.

Q The man wasn't still in the house then.

A No.

Q Where was your Aunt Jacques?

A She was standing in the kitchen door.

Q And where was your grandmother and Uncle Freddie when she asked him why he brought that man in the house?

* * *

[p. 30] A He gave it to my grandmother.

Q To your grandmother?

A She put it in the sink.

Q And your grandmother put it in the sink. What did Jacques say to him when she got up?

A Nothing.

Q Nothing?

A She didn't say nothing.

Q Did anyone try to put a band aid on Jacques's hand?

A I think my grandma asked – I think my grandma said, "Come here and let me put a band aid." She never said anything. She didn't go. My Uncle Freddie went downstairs and she followed him downstairs.

Q Did she run after him?

A No. She just walked down the steps.

Q Well, before your Uncle Freddie went downstairs, did Jacques chase him around the kitchen?

A Yes.

Q Did she have the knife in her hand when she chased him around the kitchen?

A No. She picked up another one.

Q Picked up another knife.

A Yes.

* * *

[p. 34] what happened in the kitchen and, in fact, she's already testified as to what she heard. Why you feel the need to go back over it again, I don't know, except to intimidate this child.

MR. CHARLES: Well, let me respond to your objection my saying if you were listening you would realize that I've asked her on each separate event as it occurred chronologically and this is the first time that I've asked her what happened and what was said when she chased and when she picked up the second knife.

MR. ROBERTS: Okay.

Q JaSaundra, when Jacques went downstairs with the knife, was anybody yelling in the kitchen?

A No.

Q And you went downstairs with her or behind her?

A Yes.

Q Was Tequila in front of you or behind you?

A In front of me, I think.

Q You think? How about your grandma?

A She was in front of me.

Q Were you the last one down?

A Yes.

[p. 35] Q And tell me what you saw when you got downstairs.

A My Uncle Freddie picked up a bicycle and started running around with it in front of him.

Q Whose bike was it?

A Mario's.

Q Mario's bike, your cousin's?

A Yes.

Q Is it still there at the house?

A I don't know. I don't know.

Q Did anyone try to put a band aid on Jacques's hand?

A I think my grandma asked – I think my grandma said, "Come here and let me put a band aid." She never said anything. She didn't go. My Uncle Freddie went downstairs and she followed him downstairs.

Q Did she run after him?

A No. She just walked down the steps.

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A Yes.

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A In front of me, I think.

Q You think? How about your grandma?

A She was in front of me.

Q Were you the last one down?

A Yes.

[p. 35] Q And tell me what you saw when you got downstairs.

A My Uncle Freddie picked up a bicycle and started running around with it in front of him.

Q Whose bike was it?

A Mario's.

Q Mario's bike, your cousin's?

A Yes.

Q Is it still there at the house?

A I don't know. I don't know.

Q Haven't been downstairs. Have you seen it lately?

A I don't know. I haven't been looking for it.

Q What did Uncle Freddie say when he was running, carrying this bike?

A He said, "Girl, you must be crazy."

Q And what did Jacques say back to him?

A I don't know.

Q Did your grandmother say anything?

A I went back upstairs.

Q So you didn't hear your grandmother say anything?

A No.

Q And how about your sister, Tequila, did [p. 36] you hear her say anything downstairs?

A No.

Q Was anybody else downstairs?

A No.

Q Did you see your Uncle Freddie put the bike down?

A I don't know. I went back upstairs.

Q I understand but did you see him put the bike down before you went upstairs?

A No.

Q Did you see your Uncle Freddie pick up a stick?

A No.

Q Didn't see him pick up a stick?

A No.

Q Do you remember a stick being down there?

A Yes.

Q What color was it?

A Black, I think.

Q Black? Do you remember somebody picking it up?

A My grandmama.

Q Your grandmother picked it up?

A Yeah.

Q What did she say when she picked it up?

[p. 37] A She just told them to stop.

Q Told Freddie and Jacques to stop?

A Yes.

Q Uncle Freddie and Jacques, your auntie?

A Yes.

Q Did she say she was going to hit them with the stick if they didn't?

A No.

Q Did she shake it at them?

A No. She always get the stick when Jacques start playing.

Q She does?

A Uh-huh.

Q Do you remember any other times when she got a stick when Jacques was playing?

A No.

Q Was the stick downstairs or did she bring it downstairs from upstairs?

A She brought it from upstairs.

Q Where did she keep it upstairs?

A In her room.

Q Was it like a switch that you get spankings with?

A No.

Q Was it a walking stick?

[p. 38] A No.

Q Do you remember how big around it is?

A No.

Q Is it still in your grandma's room? Don't know?

A (Witness shakes head in the negative.)

Q JaSaundra, do you remember what Jacques was doing with the knife when she chased Uncle Freddie around in the basement?

A Nothing. She was just holding it in her hands.

Q Did they run around the pool table?

A Yes.

Q Do you remember how many times they run around?

A I don't know.

Q Five times?

A I don't know.

Q Did you see them run out the back door?

A No. I went upstairs.

Q You went upstairs?

A Yeah.

Q Did you see somebody open the back door?

A My grandma.

Q She opened the back door?

[p. 39] A Yes.

Q Did she tell them to go outside?

A Yes.

Q She did?

A Yes.

Q Did you see your Uncle Freddie and Jacques running around in the backyard?

A No.

Q You didn't see them running around the barbeque –

A No.

Q – grill in the backyard?

A No.

Q Did somebody tell you later that they had?

A No.

Q Did you see Jacques and your Uncle Freddie run down the drive and into the front yard?

A No. I was already at the front.

Q You were already in the front yard?

A Yes.

Q So you went back upstairs and then went out the front door?

A Yes.

Q Could you see them in the backyard from [p. 40] the front yard?

A No. I was on the front porch.

Q On the front porch. So you saw them when they ran around front.

A Yes.

Q Was Jacques still chasing them?

A Yes.

Q And was your Uncle Freddie saying anything to her?

A No.

Q No? Did Jacques still have the knife?

A Yes.

Q What was she doing with it?

A Nothing.

Q Was she holding it? Do you remember?

A Just holding it in her hand.

Q In her hand?

A Yes.

Q Could you see your grandmother at that time when they first got in the front yard?

A No.

Q Where did Jacques chase Uncle Freddie in the front yard?

A Over around the flower bed.

Q How many times did she chase him?

[p. 41] A I don't know.

Q More than once?

A I don't know.

Q While Jacques is chasing him around the flower bed in the front yard, is your Uncle Freddie saying anything to her then?

A No.

Q Nothing?

A Nothing.

Q Do you remember your grandmother coming around front?

A Yes.

Q What did she say when she came around front?

A She say, "You all better quit."

Q Did she still have her stick with her?

A I don't remember.

Q Not sure? Not sure?

A I'm not sure.

Q Did Jacques quit chasing him?

A No.

Q Do you remember whether it was dark out in the front yard?

A No.

MR. ROBERTS: Didn't hear you, JaSaundra. [p. 42] What did you say?

THE WITNESS: No.

Q No, you don't remember or no, it wasn't dark?

A I don't remember if it was dark or not.

Q Okay. Do you remember if the street lights were on?

A No.

Q And don't you have lights around your house, the outside of your house?

A Yes.

Q Were they on, do you remember?

A I don't know.

Q Don't remember? What happens next after Jacques has been chasing Uncle Freddie around the front yard?

A Then the police came and then – because Jacques was going halfway up the street and the police came and he told her to come to the car, she come down to the car and started talking to him.

Q Do you know where Jacques was going?

A To my auntie's house.

Q Where it that?

A Up the street.

Q Up the street a few houses?

[p. 43] A Yes.

Q What's the name of your auntie?

A Annette.

Q Annette?

A Yes.

Q You heard the police officer tell them come to the car, tell Jacques to come to the car or did you just see her walk over to the car?

A I seen her walk over to the car.

Q Could you hear anything that Jacques and the policeman were saying?

A Yes.

Q What did you hear them say?

A Jacques said she was going to kill my uncle.

Q And what did the policeman say?

A "No, you're not."

Q And then what did Jacques say?

A "Yes, I am."

Q And what did the policeman say?

A "No, you're not."

Q And then what did Jacques say?

A I don't know. I went back – I ran back in the house.

Q You ran back in the house?

* * *

[p. 45] Q You thought everything was going to be all right?

A Yes.

Q Do you remember where Tequila was?

A She was about right – she she was almost in the street.

Q Real close to you?

A Yes.

Q Why don't you just put an X where you think she was.

A She was about – I was in the ditch right there and she was closer to the street about right there (indicating).

Q So you really belong in the ditch so I'm going to move you a little bit over to the ditch, okay? So you were both very close to the road.

A Yes.

Q Was anybody on the porch when you ran back in?

A No.

Q Did you hear your Uncle Freddie say anything before you got in the house?

A No.

Q Did you see your Auntie Jacques – just tell me what your Auntie Jacques was doing with the [p. 46] knife when she was talking to the policeman.

A She had had it down by her side.

Q Where did you go in the house?

A I got right there by the living room door and I heard the beginning of shots and I ran back out.

Q Can you show me where the living room is sort of in the house? I know you've got bedrooms over here (indicating).

A Here's the front door (indicating). Right about through here is the living room door and I went through there. I was right there and I was going to go back in my sister's room then I heard the first beginning of the shots and I ran back out.

Q And you ran back out?

A Yes.

Q What were you going to do in your sister's room?

A I was going to go back in and call my daddy.

Q And why did you want to do that?

A To ask was he still going to bring my bicycle.

Q Did you see anything outside from inside the house?

A No.

* * *

[p. 67] A No.

Q Could you see the knife in Jacques's hand?

A Yes.

Q Can you think of any reason why Uncle Freddie couldn't have seen it?

A No.

Q Did she have it hidden in any way?

A No.

Q Do you know who called the police?

A Jacques.

Q Were you there when she did?

A Yes.

Q Where is the telephone that she used?

A In the kitchen.

Q At what point during all of this did she call the police, after she had been down on the kitchen floor or before?

A After.

Q Was Freddie Swope standing there when she called?

A I don't know.

Q You don't remember if it was before or after he went down the stairs?

A I don't know if it was before or after.

[p. 68] Q It was before she picked the second knife up, though.

A Yes.

Q Do you know whether Freddie Swope knew that she had called the police?

A No.

Q You don't know?

A No. No.

Q You do not know or –

A I don't know.

Q What happened the first time Jacques called the police?

A My grandmother hung the telephone up.

Q Then did she try again?

A Yes.

Q Was your grandmother still standing there?

A I don't know.

Q How many times did she have to try before she got the police?

A I think it was two or one.

Q What did Jacques say when she got the police on the line?

A I don't know. I went back in the back room after.

* * *

[p. 74] by the driveway.

Q She was at the mailbox first and then over in the driveway?

A I think she was.

Q Did you ever hear Officer Sneed ask Jacques what the problem was or anything?

A Yes.

Q What did he say?

A I think he asked what was the problem and she said she was going to kill my uncle and he said, "No,

you're not", and she said, "Yes, I am", and he said, "No, you're not" and I went back in the house.

Q Do you remember which hand she had the knife in during the time she was talking to the officer?

A I think it was the right.

Q Did you see her switch hands ever, switch it from hand to hand?

A Yes.

Q How many times?

A Once.

Q Now, you may not remember this but did she switch from her left hand to her right hand or her right land to left hand?

A Right hand to her left hand.

[p. 75] Q Do you remember if she was holding it – do you know how somebody uses an ice pick and chops this way (indicating)?

A Yes.

Q Was she ever holding it that way?

A No. She was holding it down by her side.

Q You see how I'm holding this pen?

A Yes.

Q Like you would an ice pick, was she holding it this way down at her side (indicating)?

A No.

Q She was holding it this way (indicating)?

A Down like this (indicating).

Q Am I doing it right?

MR. CHARLES: Just let her show you, John.

Q Can you show me?

A She had it like this (indicating).

Q Turn around so I can see.

MR. ROBERTS: Let the record show that she's holding it with the blade pointed toward the ground.

MR. BROWN: And the blade is emerging from between her thumb and forefinger; is that fair, Mr. Roberts?

MR. ROBERTS: Yes, sir.

* * *

[p. 78] Q And you've got the tablet in front of you and I can just see the top of your nose and your eyes.

A Yes.

Q And Jacques would have been off to his left talking to him, right?

A Yes.

Q So will you turn how he was sitting when he was talking to her?

A This way (indicating).

Q. The windshield is still over here where I am. So he was holding that book up beside the window that rolled down?

A No. He was sitting towards the steering wheel like this (indicating).

Q So the steering wheel now is facing Mr. Roberts.

A Yes.

Q How was he talking to Jacques, did he just have his head turned?

A Yes.

Q Show me.

A Like this (indicating).

Q So he was just talking to her and did he have that book in both of his hands or could you tell?

A I think he just had it in one

[p. 79] Q All right. Thank you. How far away from the car was Jacques standing?

A I don't know.

Q Close enough to reach and touch it?

A I think so. I don't know.

Q At the time the police car stopped and Jacques and Officer Sneed had this conversation, where were the cousins, James and Mario?

A In the house.

Q So they were never outside.

A No.

Q Do you know if Tequila went inside to see about them at any point?

A I think she told us to get back in the house and I came back out.

Q After the shots were fired.

A I think it was before the shots were fired.

Q Do you know if anybody at all that night ever tried to warn this police officer that Jacques had a knife?

A I don't know.

Q Did you hear Uncle Freddie say anything to the officer before the shooting?

A No.

[p. 80] Q Did you hear Ms. Helen Brooks say anything to him?

A No.

Q And you didn't because you were some distance away.

A Yes.

Q And did you hear Tequila say anything?

A No.

Q Do you know why your grandmother hung up the phone when Jacques tried to call the police?

A No.

MR. BROWN: Let us step out a minute. I think I'm about through.

(10:37 a.m., a recess was had until 10:45 a.m.)

MR. BROWN: Just for the record, we'll make the photograph of the bicycle Late Filed Exhibit 2, the photograph of the stick Late Filed Exhibit 3 and the map that Mr. Charles Drew and Ms. JaSaundra Brooks marked, that will be Exhibit 4 and that's all the questions I have.

(The above-referred to diagram was thereupon marked J. Brooks Exhibit No. 4, and is attached hereto.)

MR. HILDEBRAND: Better ask her, is the

* * *

[p. 10] A. (Witness nods in the affirmative).

Q. Did Jackie walk down to the bus to get you?

A. Not often. Sometimes.

Q. Did she that day, do you remember?

A. No.

Q. You don't remember, or she didn't do it?

A. She didn't.

Q. What had Jackie said about the man, when you came home?

A. Are you talking about Uncle Fred?

Q. No, when you got home, had Jackie Brooks said anything to you?

A. No.

Q. What was she doing when you got home that day?

A. I can't even remember.

Q. Now, was Jackie mad at Uncle Freddie for bringing the man home?

A. Yes.

Q. What sort of things made Jackie

* * *

[p. 17] Q. I am sorry?

A. He had already been by there and we was gone, so he didn't leave it.

Q. Did he say he would bring it back?

A. I can't remember.

Q. Now, did you hear Jackie ask your Uncle Freddie why he had brought that man into the house?

A. Yes.

Q. And what did he say?

A. I don't know.

Q. But you did hear her ask him that?

A. (Witness nods in the affirmative).

Q. Now, when they were talking, where were you when you heard her ask him that?

A. Different places. I – first I was in the living room, and then I went down the hallway. And my sister went, too.

Q. And where was Jackie Brooks when she was asking your Uncle Freddie why he brought that man in the house?

A. I am not sure.

[p. 18] Q. You think they were in the kitchen?

A. I am not sure.

Q. Did you see Jackie Brooks hit your Uncle Freddie then?

A. Yes.

Q. Did she hit him in the eye?

A. She really didn't hit him.

Q. What did she do?

A. She just kind of (indicating) – like she didn't hit him, but – I don't know what she did. She kind of slinged by his eye, but she didn't hit him.

Q. She kind of grazed his eye.

A. (Witness nods in the affirmative).

Q. Is that what you are saying?

A. Yes.

Q. Which eye did she hit him in or graze him in?

A. I am not sure.

Q. Were you standing in the living room when she did whatever she did to his eye?

A. Yes.

Q. And was Jackie in the kitchen?

[p. 19] A. Yes.

Q. And was your Uncle Freddie in the kitchen, too?

A. Um-hum (affirmative response).

Q. What did Freddie say when Jackie hit him in the eye?

A. I don't know.

Q. Now, did your grandmother then tell you to go wake up your older sister?

A. Yes.

Q. And to put some drops in his eye?

A. Yes.

Q. Did you do that?

A. Yes.

Q. Where did your older sister, Tequila – where did she put drops in his eye? Where was Uncle Freddie? Was he in the kitchen?

A. I am not sure.

Q. Do you remember where he was when she put drops in his eye? Do you think he was in the kitchen?

A. I am not sure.

Q. Were you with him?

A. No.

[p. 20] Q. Where were you?

A. I was in the living room.

Q. Still in the living room?

A. (Witness nods in the affirmative).

Q. Now, did you see, after she had put – after Jackie had put drops in your Uncle Freddie's eye – I am sorry, after Tequila had put drops in your Uncle Freddie's eye, did you see Jackie Brooks pick up a knife?

A. I can't remember.

Q. Well, did you see a knife in her hand?

A. When I came back in the kitchen, I did.

Q. Did it have a wooden handle on it?

A. Yes.

Q. Did you see where she got it?

A. No.

Q. Did you see – did you then see your Uncle Freddie wrestle her down to the floor?

A. Yes.

Q. And did he take the knife away [p. 21] from her?

A. Yes.

Q. Did you see her grab the blade of the knife and cut her hand?

A. No.

Q. Did you see her hand was cut?

A. I really didn't pay no attention.

Q. Jasaundra, did you see any of the blood?

A. I don't remember.

Q. You don't remember whether you saw – whether your aunt's hand was cut or not?

A. (Witness shakes head in the negative)

Q. I am sorry, you have to say yes or no.

A. No.

Q. Did you see your grandmother wash off Jackie's hand?

A. I can't remember.

Q. Did your Uncle Freddie tell Jackie she was going to have to cool down?

A. Yes.

Q. Did he tell her to let go of the

* * *

[p. 23] A. I am not for sure.

Q. Do you remember your grandmother cutting peppers that night?

A. Yes.

Q. Did you see your Aunt Jackie Brooks, when she was on the phone, trying to call whoever she was trying to call?

A. Yeah.

Q. What did you hear her say; anything?

A. She told them – she told them to send the police to 1613.

Q. You heard her give the address there at your grandmother's house?

A. (Witness nods in the affirmative).

Q. Did she say she had been in a fight?

A. No.

Q. Did she say anything else, other than the address, that you remember?

A. Not that I can remember.

Q. Did she mention your uncle at all?

A. No.

* * *

[p. 34] Q. You walked out into the yard.

A. (Witness nods in the affirmative).

Q. Did you walk out into the yard because the policeman came?

A. Yes.

Q. What was your Aunt Jackie Brooks doing when the policeman came?

A. She was walking up the street to my aunt's house.

Q. How far up the street is that; how many houses?

A. About five houses.

Q. Is it on the corner or is it before you get to the corner?

A. Top of the street.

Q. Top of the street?

A. Not really a corner.

Q. Does she live on your grandmother's street, as well; same street?

A. No.

Q. Was she walking towards the police car, as it pulled up?

A. She was walking on to my auntie's house.

* * *

[p. 40] Q. Did you see anything in his hands when he was in the police car?

A. I couldn't see his hands.

Q. Tell me what you remember, right from when the police car first drove up.

A. He pulled up. It was something sitting – he stopped and something – something sitting up on top of the – and I couldn't make out what it was.

Q. All right. Go ahead.

A. And then after he pulled up there he started talking, and I went in the house. And then when I got in the house, then I heard the first shot and I ran back out, and she was laying on the ground.

Q. Pardon?

A. And she was laying on the ground.

Q. So you didn't see your aunt actually get shot at all?

A. No.

Q. Did you hear all of the shots?

A. Yes.

Q. Were they real fast?

A. Yes.

* * *

[p. 60] A. Yes.

Q. And Jackie had the knife in her hand at that time.

A. Yes.

Q. And you could see it.

A. Yes.

Q. Did she have it hidden in any way; holding it behind her, or under her shirt or anything?

A. No.

Q. It was out there where you could see it?

A. Yeah.

Q. Is there any reason why Freddie Swope couldn't have seen it?

A. No.

Q. Were you downstairs when Freddie Swope and Jackie Brooks went out the door, into the back yard?

A. Yes.

Q. Who else went into the back yard?

A. Grandma.

Q. Did you see anything get knocked over or bumped out of the way, during this deal [p. 61] down in the basement?

A. When we went back up, I went upstairs and out the front.

Q. Did you see anything get knocked over in the basement?

A. No.

Q. Then you went back upstairs and out onto the porch?

A. On the porch.

Q. And they were out there then?

A. Yes.

Q. And Jackie had the knife then; didn't she?

A. Yes.

Q. And then did she stop chasing, at some point?

A. After they went around the flower bed.

Q. All right. And then Jackie started off up the street.

A. Yes, sir.

Q. Did you hear your grandmother say anything about getting in the car and taking somebody up to Annette Drennon's house?

A. I am not for sure.

[p. 62] Q. Did Freddie Swope holler anything after Jackie, when she started up the street?

A. I don't know.

Q. Did he ask her where she was going?

A. Not that I can remember.

Q. Was he still teasing her?

A. I don't know. I can't remember.

Q. Did you see the police car when it turned into Haynes Meade Circle?

A. No.

Q. You didn't? Why not?

A. Because I was still on the front porch.

Q. All right. Did the bushes block you from seeing up the street?

A. Yes.

Q. When did you first see it? Where was it?

A. When I walked out in the yard, it was coming down the street.

Q. You saw it when it was still moving down the street?

A. Yes.

* * *

[p. 66] DEPOSITION OF JASAUNDRA BROOKS

A. I just didn't see his hands.

Q. Did any of your family members try to warn Officer Sneed that Jackie Brooks had a butcher knife in her hand?

A. I can't remember.

Q. Did you warn him?

A. No.

Q. Did you hear Helen Brooks say anything to him about it?

A. I can't remember.

Q. Did you hear Freddie Swope say anything about it?

A. I can't remember.

Q. Did you hear Tequila say anything about it?

A. I can't remember.

Q. Where were James and Mario, during the time that Jackie and Officer Sneed were having their conversation?

A. I don't remember.

Q. You don't know if they were in the house or outside the house?

A. I don't know if they was in the house or standing in the front door or what.

Q. At the time Jackie and Officer

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES Q. BROOKS (Deceased), Formerly a Citizen and Resident of Davidson County, Tennessee, and HELEN BROOKS, a Citizen and Resident of Davidson County, Tennessee, Individually, and as Administratrix for the Estate of JACQUES Q. BROOKS, Deceased, Plaintiffs, VS. WILLIAM SNEED, Individually and In His Capacity As a Police Officer for the Metropolitan Government of Nashville and Davidson County, Tennessee, and THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, Defendants.	No. 3:90-0917 (Judge Wiseman) Jury Demand

PLAINTIFF'S RESPONSE TO DEFENDANT SNEED'S MOTION FOR SUMMARY JUDGMENT

(Filed Aug. 12, 1993)

Jacques Brooks was a citizen and resident of Nashville, Davidson County, Tennessee when Defendant Sneed killed her by shooting her four times in the back and side while Jacques Brooks was recoiling in a defense position. (Sneed Deposition, p. 7, 1n 20; Wheaton Affidavit, ¶ 3, 4). Defendant Sneed was a Metropolitan

Nashville Police Officer responding to a domestic disturbance call made by Jacques Brooks. His patrol car was operative with the engine idling and defendant Sneed in the front seat when defendant Sneed killed Jacques Brooks. Defendant Sneed used a new 9 mm semi-automatic pistol in single action mode. He had purchased this weapon privately a few months earlier and this was his first actual use of such a weapon against a person. Sneed was wearing a Kevlar vest the entire time. He had other weapons he could have used such as a 26 inch or 28 inch baton and other defensive tactics he could have taken.

Defendant Sneed has had many previous excessive force complaints filed against him and defendant Metro Nashville settled both of the previous lawsuits against him. (Metro Answer to Interrogatory # 6, 7). Freddie Swope has been prescribed glasses, but these are for driving purposes. He was able to see the interchange between Jacques Brooks and defendant Sneed without the aid of his eyeglasses. (Deposition of Freddie Swope at p. 83, 1n. 3-5). The actions of defendant Sneed factually and proximately caused the assault, battery and wrongful death of Jacques Brooks and the deprivations of her constitutionally protected civil rights. Said actions constituted recklessness, gross negligence, and deliberate indifference as well as outrageous conduct.

Plaintiff seeks compensatory damages of $4 million and punitive damages of $2 million in a jury trial.

Unlike the Motion for Summary Judgment prepared by defendant Metro, plaintiff will refer to all parties by using parties' full names or last names in this response to defendant's Motion for Summary Judgment. Both the

brief of defendant Metro and defendant Sneed refer to Jacques Brooks as "Jackie" while referring to William Sneed as Sneed.

STATEMENT OF THE CASE

Ms. Helen Brooks brings this suit on her own behalf and as administratrix of the estate of her deceased daughter, Jacques Q. Brooks. Seconds after arriving at Jacques Brooks' home in response to her call for help, police officer William Sneed shot her four times in the back and side, killing her. (Sneed Deposition at p. 7).

Named as defendants in this suit are Officer Sneed and his employer, the Metropolitan Government of Nashville and Davidson County ("Metro"). The causes of action presented against Defendant Sneed are deprivation of Jacques Brooks' Fourth Amendment right to be free from unreasonable seizures and her Fourteenth Amendment right of due process, pursuant to 42 U.S.C. §1983. Additionally, Helen Brooks brings pendent state law claims of assault, battery, outrageous conduct, gross negligence, and negligence. Metro is also sued under §1983 in relation to the Fourth and Fourteenth Amendments, and under state law for negligence and gross negligence.

DISPUTED FACTS

Plaintiff disagrees with the material facts as stated in defendant Metro's motion for summary judgment and submit the following corrections, additions and disputed facts:

1. Defendants' Key affidavits on use of deadly force are James Fyfe and David Grossi. Fyfe and Grossi conclude that Sneed's use of force is reasonable and necessary. (Fyfe Affidavit, ¶ 3, 6; Grossi Affidavit, ¶ 8, 9). Both affidavits are contradicted by the affidavits of Phillip L. Davidson and David K. Wheaton. Davidson concludes that Sneed's later shots were an excessive use of force and that this was both reckless and illustrate a deliberate indifference if not an intentional violation with respect to use of deadly force. (Davidson Affidavit, ¶ 5, 6). Dr. Wheaton analyzed the Sneed shooting as an "excess of force was used" (Wheaton Affidavit, ¶ 3); that the evidence in the record is different from Sneed's testimony (Wheaton Affidavit, ¶ 3, 4); and that Sneed handled this recklessly (Wheaton Affidavit, ¶ 5); and Metro was grossly negligent (Wheaton Affidavit, ¶ 6).

2. At no time did Jacques Brooks raise a knife above her head while facing defendant Sneed. (Deposition of Freddie Swope at p. 82, 1n 21, hereinafter Swope Deposition). Metro claims that the knife was raised in an ice pick manner or similar manner. (Sneed Deposition at pp. 214, 1n 5-7; 215, 1n 24, 25 and 216, 1n 1; Fyfe Affidavit, ¶ 2A; Grossi Affidavit, ¶ 8, 9).

3. Jacques Brooks turned to retreat after defendant Sneed's shots from his 9mm semi-automatic pistol struck her. (Deposition of William G. Sneed at p. 7, 1n, 19, hereinafter "Sneed Deposition; (Wheaton Affidavit, ¶ 3, p. 4).

4. Defendant Sneed continued firing at Jacques Brooks (Deposition of William G. Sneed at p. 14, ln 25), as she recoiled, in a defensive reflection, away from the car. (Sneed deposition, p. 7, ln 20; Wheaton Affidavit, ¶ 3).

5. Defendant Metro mischaracterized Jacques Brooks' retreat away from defendant Sneed as a spinning motion rather than recoiling in a defensive reflection as defendant Sneed testified. (Sneed Deposition, p. 7, ln 20).

6. There was been a "pattern of excessive force in dealing with the public" by officer Sneed (Wheaton Affidavit, ¶ 4, p. 5). Defendant Metro was "deficient" in their handling of Sneed (Wheaton Affidavit, ¶ 4, p. 5) in this escalating history of force. Dr. Wheaton concludes this was not an "atypical" or "isolated" problem in that Metro was guilty of deliberate indifference, or "was grossly negligent in not intervening" earlier in Sneed's career. (Wheaton Affidavit, ¶ 4, p. 6). There have been two law suits initiated against defendant Sneed that were later settled (*Deerman v. Mason et al.*, 1989 and *Conner v. Mason et al.*, 1989); three internal affairs investigations (Sylvainus Cole, Jr., 1990, Harold McKinney, 1989 and Scott M. Brantley, 1990); and seven incidents involving use of force on the part of defendant Sneed where a weapon was used and injury resulted. (Robert L. Baker, 1990, Sam W. Walker, 1989, Ricky Lee Patton, 1989, David Hommrich, 1986, Donald Clemons, 1985, Frank Matlock, 1985, and

Steven Jefferson, 1985) have been reported to defendant Metro of which, only two have been formally investigated. (Defendants' Answer to Plaintiff's Interrogatories, #6, #7). Defendant Metro should have been on notice about the violent nature of defendant Sneed. (Wheaton Affidavit, ¶ 4).

7. The affidavit of Dr. Charles Harlan is materially contradicted by the testimony of Officer Sneed at his deposition. This is important because the other affidavits (such as Grossi and Fyfe) make numerous reference to the forensic finding or records. Dr. Harlan's affidavit relies on Sneed (Harlan Affidavit, ¶ 3) and ¶ 4(a) says Jacques Brooks was "facing Officer Sneed." Then why is the first shot entry wound in Ms. Brooks right side of her breast? (See Medical Examiner's Report of Dr. Harlan attached as Exhibit 1 to Sneed Deposition). Dr. Harlan says Jacques Brooks right arm was raised (Harlan Affidavit, ¶ 3); yet Sneed says her left arm was raised with the knife (Sneed Deposition at pp. 215, 1n 24-25; 216, 1n 1). Finally, defendants' claim Jacques Brooks was facing Sneed with the knife raised in her left hand but the pattern of Sneed's shots into her body starts on the right side (side of her breast) and travels around the right side of her body to her back (See Dr. Harlan's Medical Examiner's Report attached as Exhibit 1 to Sneed Deposition).

8. Freddie Swope has been prescribed glasses, but these are for driving purposes. He was able to see the interchange between Jacques

Brooks and defendant Sneed without the aid of his eyeglasses. (Deposition of Freddie Swope at p. 83, 1n. 3-5).

9. Freddie Swope; failure to hear the conversation between Jacques Brooks and defendant Sneed was the result of a hearing impairment. Freddie Swope has stated under oath that his hearing is impaired and sometimes he is unable to hear at all. (Deposition of Freddie Swope 94, 1n 19).

10. On June 16, 1989, Defendant Sneed exhibited violent behavior resulting in the injury of a suspect that went unreported by Metro officials even though an eyewitness filed a report detailing the actions of defendant Sneed. (Defendants' Answer to Plaintiff's Interrogatory #6).

11. When defendant Sneed fired more than two shots at Jacques Brooks he exceeded his authority and was guilty of use of excessive force. (Wheaton Affidavit, ¶ 3).

12. Defendant Sneed's decision to continue firing at Jacques Brooks after she turned away from him was reckless and demonstrative of his deliberate indifference to the civil rights of Jacques Brooks with respect to the use of deadly force. (Davidson Affidavit, ¶ 6 and Wheaton Affidavit, ¶ 3).

13. The flashbulb effect would not have prevented defendant Sneed from determining whether Jacques Brooks was still a threat to him. (Wheaton Affidavit, ¶ 3).

14. Defendant Sneed could not have seen the position of Jacques Brooks feet in the reclined seated position he claims to have

assumed when firing at Jacques Brooks. (Wheaton Affidavit, ¶ 3).

Jacques Brooks was a twenty-six year old black female. She was a little over five feet tall, and weighed approximately 115 pounds. (Medical Examiner's Report, Attached to Sneed Depo.) On March 13, 1990, she called Metro police dispatchers to request assistance in dealing with a domestic dispute. (Jasaundra Brooks Deposition (1991) at p. 21).

Officer William Sneed responded to Jacques Brooks' call for help. (Sneed Affidavit, p. 2) Officer Sneed joined the Metro police force in 1984. (Sneed Affidavit, p. 1) Officer Sneed performed well in the police training academy and received a string of positive evaluations during the first several years that he served on the force. However, beginning in 1989, Officer Sneed participated in several actions giving rise to claims of police brutality and the use of excessive force. (Defendants' Answer to Plaintiff's First Interrogatory, # 2) Within an approximately eighteen month period prior to the time in when he shot Jacques Brooks in the back and killed her, Officer Sneed had been the subject of two lawsuits and three separate citizen complaints of use of excessive force. *Id.*

Additional facts related to the specific encounter in which Officer Sneed shot and killed Jacques Brooks will be discussed as relevant to discussion of the defendant's assertion of qualified immunity, infra.

ARGUMENT

A motion for summary judgment pursuant to Rule 56 may not be granted where there exists a genuine issue as

to any material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). For purposes of summary judgment;

> [c]redibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge . . . The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255, 106 S.Ct. at 2513.

This approach to Rule 56 recognizes the preference for jury determination of contested material facts that is deeply ingrained in American law. For that reason, summary judgment is to be granted only "[w]here the record taken as a whole could not lead a rational trier of fact to find for the non-moving party." *Matsushita Electrical Industrial Co. v. Zenith Radio*, 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986) (citations omitted). Determination of whether or not disputed facts are "material" depends upon the substantive law governing the dispute. See *Russo v. City of Cincinnati*, 953 F.2d 1036 (6th Cir. 1992). For the reasons enumerated below, disputes remain as to material facts impacting all the grounds in the suit. Therefore, summary judgment is inappropriate.

Defendant Sneed Is Not Entitled To Qualified Immunity Under §1983 Because Material Facts Are Disputed Bearing On Whether Officer Sneed Acted Reasonably In Shooting Jacques Brooks

To successfully state a claim under §1983, a plaintiff must identify a right secured by the United States Constitution and the deprivation of that right by a person acting

under the color of state law. *West v. Atkins*, 487 U.S. 42, 48, 108 S.Ct. 2250, 2255, 101 L.Ed.2d 40 (1988). However, the doctrine of qualified immunity protects government officials performing discretionary functions from liability as long as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known. *Anderson v. Creighton*, 483 U.S. 635, 639, 107 S.Ct. 3034, 3039, 97 L.Ed.2d 523 (1987). As the *Anderson* Court stated the issue:

> Whether an official protected by qualified immunity may be held personally liable for an allegedly unlawful action generally turns on the objective legal reasonableness of the action, assessed in light of the legal rules that were clearly established at the time it was taken . . . The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right. (Citations omitted). 438 U.S. at 639, 107 S.Ct. at 3038-3039.

In the Sixth Circuit:

> [w]hen a claim to qualified immunity is raised within the context of a motion for a summary judgment, the non-movant must allege facts sufficient to indicate that the act in question violated clearly established law at the time the act was committed. Thus, the plaintiff must effectively pass two hurdles when facing a defendant on summary judgment who claims qualified immunity. First, the allegations must state a claim of violation of clearly established law. Second, the plaintiff must present evidence sufficient to create a genuine issue as to whether the defendant in fact committed those acts. At the

> summary judgment stage, whether the legal violation alleged was clearly established at the time of the incident, as well as whether a genuine issue of material fact exists as to whether the alleged violation occurred, are questions of law for the court. *Russo v. City of Cincinnati*, 953 F.2d 1036 (6th Cir. 1992).

Therefore, to defeat the defendant's motion for summary judgment, Mrs. Brooks must: (1) allege that Officer Sneed violated clearly established law relating to the use of deadly force; and (2) raise genuine issues of material fact as to whether Officer Sneed's actions constituted violation of that clearly established law. *Id.*

Clearly established law carefully circumscribes the instances in which deadly force may be used by police officers. See *Tennessee v. Garner*, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985). *Garner* clearly states that "if the suspect threatens the officer with a weapon . . . deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given." 4712 U.S. at 9, 105 S.Ct. at 1700. By implication, deadly force may not be used where it is unnecessary. Carefully circumscribing officers' power to kill comports with the seriousness inherent in any application of deadly force. As noted in Garner, "[t]he intrusiveness of a seizure by means of deadly force is unmatched. The suspect's fundamental interest in his own life need not be elaborated upon. The use of deadly force also frustrates the interest of the individual, and of society, in judicial determination of guilt and punishment." *Id.*, at 11-12 and 1701.

Further, the legal rule in Tennessee governing the use of deadly force by a police officer is clearly delineated in T.C.A. §39-11-620:

> Use of deadly force by a law enforcement officer. – (a) A law enforcement officer, after giving notice of his identity as such, may use or threaten to use force that is reasonably necessary to accomplish the arrest of an individual suspected of a criminal act who resists or flees from the arrest.
>
> (b) Notwithstanding subsection (a), the officer may use deadly force to effect an arrest only if all other reasonable means of apprehension have been exhausted or are unavailable, and where feasible, the officer has given notice of his identity as such and given a warning that deadly force may be used unless resistance or flight ceases, and:
>
> (1) The officer has probable cause to believe the individual to be arrested has committed a felony involving the infliction or threatened infliction of serious bodily injury; or
>
> (2) The officer has probable cause to believe that the individual to be arrested poses a threat of serious bodily injury, either to the officer or to others unless immediately apprehended.

Thus, where deadly force is not "reasonably necessary" and if reasonable means of apprehension are neither exhausted nor unavailable, or if the officer does not have probable cause to believe that the individual to be arrested poses a threat of serious bodily injury unless immediately apprehended, an officer using deadly force acts unlawfully. *Id.* Defendant Sneed does not dispute

that this is the clearly established law regarding the use of deadly force.

In shooting Jacques Brooks four times including once or twice in the back when the Defendant Sneed admits that she was in "a recoiling or defensive reflection on her part," (Sneed Deposition, 7/16/93 at p. 7) he acted unreasonably and recklessly, thus violating established law regarding the use of deadly force. Additionally, it is undisputed that Defendant Sneed failed to exhaust or even attempt any other means of apprehending or avoiding Jacques Brooks, despite the fact that he was in an automobile with the engine running and Jacques Brooks was standing outside the car. (Deposition of Freddie Swope, 6/11/91, pp. 69-70 hereinafter "Swope Depo."). Officer Sneed's first and only chosen police technique was to fire four hollow-point bullets into Jacques Brooks' back and side, and to attempt to hit her with an additional shot.

Further, genuine issues of material fact remain to be determined bearing upon whether or not Sneed acted reasonably and had probable cause to believe that Jacques Brooks posed an imminent threat of harm to him. Officer Sneed himself admits that Jacques Brooks was in "a recoiling or a defensive reflection on her part" (Sneed Depo., p. 7) as he shot her in the back. Indeed, despite Sneed's claim that Jacques Brooks was facing him and holding the knife in her left hand in an icepick fashion the first shot fired by Sneed actually appears to have entered Jacques Brooks' body from the side of her right breast. (See attached page from the Medical Examiner's report and Medical examiner's photographs attached –

produced by Defendants on Plaintiff's Request for Production, # 10). Likewise, a further shot entered her from the side. (Id.) Two additional shots struck her squarely in the back. (Id.) At some point, Officer Sneed fired an additional shot at Jacques Brooks, but this shot missed its target.

Defendants' key affidavits on use of deadly force are James Fyfe and David Grossi. Fyfe and Grossi conclude that Sneed's use of force is reasonable and necessary. (Fyfe Affidavit, ¶ 3, 6; Grossi Affidavit, ¶ 8, 9). Both affidavits are contradicted by the affidavits of Phillip L. Davidson and David K. Wheaton. Davidson concludes that Sneed's later shots were an excessive use of force and that this was both reckless and illustrate a deliberate indifference if not an intentional violation with respect to use of deadly force. (Davidson Affidavit, ¶ 5, 6). Dr. Wheaton analyzed the Sneed shooting as an "excess of force was used" (Wheaton Affidavit, ¶ 3); that the evidence in the record is different from Sneed's testimony (Wheaton Affidavit, ¶ 3, 4); and that Sneed handled this recklessly (Wheaton Affidavit, ¶ 5); and Metro was grossly negligent (Wheaton Affidavit, ¶ 6).

Additionally, the plaintiff's proof indicates that Jacques Brooks at no time raised her knife in a threatening manner. Freddie Swope, who saw the entire incident, states unequivocally that Jacques Brooks didn't raise the knife she carried. (Swope Depo. pp. 69-70) Further, Jacques Brooks made no aggressive movements. (Id.) Officer Sneed arrived on the scene of a domestic dispute to find a victim carrying a knife. The plaintiff's evidence shows

that Jacques Brooks did not move in a threatening manner, and at no time raised her knife at the Officer. Nevertheless, seconds later, he shot her repeatedly as she turned away from him in a defensive posture. Such action, taken after the non-threatening movements of Jacques Brooks as described by the plaintiff's proof, is clearly unreasonable so as to implicate violation of §1983 and to avoid qualified immunity from such liability.

Defendant Sneed's assertion that he acted reasonably in firing five shots at Jacques Brooks' side and back as she "recoiled" from him is based solely on his account of the encounter as involving Jacques Brooks with an upraised knife. The alleged objective "reasonableness" of Officer Sneed's actions depends on this fact pattern. (Fyfe Affidavit; Sneed Affidavit; and Grossi Affidavit) The plaintiff's witnesses dispute Officer Sneed's account of the encounter on several points directly impacting on the reasonableness of Officer Sneed's use of deadly force. Officer Sneed's motion for summary judgment is based on the assumption that Jacques Brooks was attacking him with the knife. Quite simply, Freddie Swope avers that Jacques Brooks did not attack the defendant. (Swope Depo., pp. 69-70) Further, Dr. Wheaton's affidavit seriously questions defendant Sneed's version of the facts.

As the Supreme Court pointed out in *Anderson v. Liberty Lobby*, at the summary judgment stage, the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor. 477 U.S. at 255. The defendant's suggestions regarding Mr. Swope's eyesight relate to the weight to be given the evidence, and do not constitute a lack of evidence so as to justify

summary judgment in Officer Sneed's favor. It is hornbook law that "credibility determinations . . . are jury functions." *Id.*

Defendant Sneed also makes much of the limited time in which he had to make the decision whether or not to use deadly force. However, the Supreme Court has rejected the attempt to frame constitutional argument surrounding deadly force around the quickness with which an officer must choose to employ or not employ deadly force. See *Tennessee v. Garner,* supra. The fact that a decision is difficult doesn't remove it from constitutional limits. Further, the fact that such short time decisions may lead to such irrevocable results if anything suggests that the defendant Metro must provide some heightened level of supervision and of policy formulation regarding the use of deadly force, its limits, and how it should be exercised in tense situations. (Affidavit of David Wheaton.)

Further, the Sixth Circuit recognizes that at some point a use of deadly force, even if justified at its inception, may rise to the level of excessive force. *Russo v. City of Cincinnati,* 953 F.2d 1036 (6th Cir. 1992). In *Russo,* a homicidal mentally ill person with two knives was subjected to two police uses of a "Taser" (a device that administers electric shocks), followed by several bursts of gunfire totalling 22 shots, some after the decedent was no longer a threat. *Id.* The Sixth Circuit Court of Appeals, in rejecting summary judgment on the grounds of qualified immunity for the officer's use of deadly force, held that "a reasonable jury might conclude that the officers' repeated use of their revolvers violated this court's

clearly established precedent on the use of deadly force." *Id.*, at 1045.

Finally, the cases cited by Defendant Sneed in support of his claim of qualified immunity are factually distinguishable from the case at bar. As discussed above, the plaintiff's evidence shows that Jacques Brooks was not attacking Officer Sneed (Swope Depo.), that she was turned away from him (Swope Depo.), and that she was shot in the back as she "recoiled." (Sneed Depo.) In the cases cited by the defendant, the decedents had previously physically attacked the officers using deadly force or third parties. For example, in *Rhodes v. McDannel*, 945 F.2d 117 (6th Cir. 1991), cert. denied ___ U.S. ___, 112 S.Ct. 872, 116 L.Ed.2d 777 (1992), the decedent had attacked his wife, who had then called the police. Further, the decedent had advanced on the officers with a raised machete. *Id.* In contrast, the plaintiff's facts in this case indicate that Jacques Brooks did not advance on the officer with a raised knife. Additionally, Officer Sneed was responding to her own call for help. Officer Sneed knew Jacques Brooks was a victim, not the perpetrator of a violent crime. Further, in *Smith v. Freland*, 954 F.2d 343 (6th Cir. 1992), it was undisputed that the decedent had attempted to run down an officer with his automobile three times. In *Freland*, the officers had experienced three successive attacks, and only then employed deadly force. *Id.* In contrast, the plaintiff's evidence in the case at bar indicates that Jacques Brooks was not attacking Officer Sneed, and that she was in fact "recoiling" as he shot her in the back. Further, in the case of *Reese v. Anderson*, 926 F.2d 494 (5th Cir. 1991), the decedent had led police officers on an

extended high-speed chase and repeatedly made threatening movements. In contrast, the plaintiff's proof in this case shows that Jacques Brooks did not make threatening motions, and she was not suspected of any crime when Officer Sneed shot her. Clearly, the cases cited by Defendant Sneed are only illustrative of the just results of cases similar to the fact pattern he himself has proposed, a fact pattern that is controverted by the plaintiff's proof in the form of the Swope Deposition, defendant Sneed's own deposition, the opinion of expert witness David Wheaton, and the opinion of expert witness Phillip Davidson. The plaintiff's proof in this case establishes a different scenario than that proposed by the Defendant and relied upon by his experts in their determination that he acted reasonably.

Therefore, as legitimate material factual disputes exist as to whether or not Defendant Sneed was threatened so as to justify the use of deadly force and whether the degree of force was appropriate for the threat, Officer Sneed's motion for summary judgment on the grounds of qualified immunity and on plaintiff's asserted failure to state a constitutional claim should be denied.

Defendant Sneed Is Not Entitled to Summary Judgment On The Plaintiff's State Law Claims

Defendant Sneed's assertion of a self-defense justification is inappropriate for summary judgment, as there remain disputes as to material facts bearing on the reasonableness of Sneed's use of deadly force. A self-defense justification for the use of force is dependent on showing of a "reasonable belief that there is imminent danger of

death or serious bodily injury." T.C.A. §39-11-611(a). As discussed above, the plaintiff's evidence indicates that Jacques Brooks did not have a raised knife and was retreating from Officer Sneed as he shot her repeatedly, striking her at least once in the back.

Further, use of force in self-defense is only justified "to the degree the person believes the force is immediately necessary." T.C.A. 39-11-611(a). Sneed admits that Jacques Brooks was "recoiling" as he shot her in the back and side. (Sneed Depo., p. 7) In firing five shots at Jacques Brooks while she was retreating, four of which tore through her body, Sneed clearly used force not immediately necessary to protect himself. (Wheaton affidavit.) Such use of force was not limited in degree as contemplated by the statute permitting use of force for self-defense. T.C.A. §39-11-611(a).

As the plaintiff's facts discussed above tend to show that Jacques Brooks did not threaten Defendant Sneed so as to justify his use of deadly force, he committed assault and battery against her in violation of T.C.A. §39-11-620. Accordingly, this Court should not grant the defendant's motion for summary judgment on this point.

Defendant Sneed Committed The Tort of Outrageous Conduct

Central to Defendant Sneed's motion for summary judgment on the claim of outrageous conduct is that the reasonableness of Defendant Sneed's use of force removes it from being the type of conduct "not tolerated by civilized society." *Medlin v. Allied Inv. Co.*, 217 Tenn. 469, 479, 398 S.W.2d 270, 274 (1966). As discussed above

in the context of qualified immunity, factual disputes remain bearing upon the issue of whether or not Sneed's conduct was reasonable. Assuming the plaintiff's facts that Jacques Brooks did not attack Officer Sneed, the unprovoked act of repeatedly shooting her in front of her family clearly constitutes conduct "not tolerated by civilized society." *Id.*

Therefore, the motion for summary judgment on this point should be denied, pending determination of whether or not Officer Sneed's act of repeatedly shooting Jacques Brooks was reasonable in light of the plaintiff's evidence that Jacques Brooks did not attack him and she was retreating when she was shot.

Defendant Sneed Acted Negligently Or Grossly Negligently

The duty of care that Defendant Sneed owed regarding the use of deadly force is governed by T.C.A. §39-11-620. The plaintiff asserts that Officer Sneed acted in violation of this statute in that he lacked justification for the use of deadly force as outlined in the statute. As discussed above in the context of qualified immunity, the plaintiff's facts show that Sneed did not have probable cause to employ deadly force against Jacques Brooks. Therefore, Defendant Sneed's actions in violation of the statute constitute negligence per se, as violation of the statute was the proximate cause of Jacques Brooks' death.

As there are factual disputes remaining bearing on the issue of whether or not Defendant Sneed acted reasonably in employing deadly force as he did, his motion for summary judgment on this point should be denied.

CONCLUSION

Because Officer Sneed admits that he continued to shoot Jacques Brooks when she was in a recoiling or defensive reflection on her part and shot her at least once or twice in the back and because experts Wheaton and Davidson both believe the use of force by Sneed was reckless and excessive, summary judgment should be denied. In the alternative, if the use of force here is a legal issue, then this Court, should find that Sneed acted recklessly and excessively and submit the issue of damages to a jury.

Respectfully submitted,

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/s/ Larry D. Woods
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded by United States mail, first class postage prepaid, to Kennetha Sawyers, Esq., Martha Zendlovitz, Esq., James L. Charles, Esq., 204 Metropolitan Courthouse, Nashville, Tennessee 37201 and to John M.L. Brown, Esq., 221 Fourth Avenue, North, Second Floor, Nashville, Tennessee 37219 on or before this 13th day of August, 1993.

/s/ L. D. Woods
Larry D. Woods

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES Q. BROOKS (Deceased), Formerly a Citizen and Resident of Davidson County, Tennessee, and HELEN BROOKS, a Citizen and Resident of Davidson County, Tennessee, Individually, and as The Administratrix for the Estate of JACQUES Q. BROOKS, Deceased, Plaintiffs, VS. WILLIAM SNEED, Individually and In His Capacity As A Police Officer for the Metropolitan Government of Nashville and Davidson County, Tennessee, and THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, Defendants.	NO. 3:90-0917 (JUDGE WISEMAN)

PLAINTIFF'S RESPONSE TO DEFENDANT SNEED'S REPLY TO PLAINTIFF'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT

Defendant Sneed's reply to plaintiff's response to motion for summary judgment fails to raise any new issues or introduce new facts that would support his motion for summary judgment. Instead, defendant Sneed

makes disconnected arguments that either mischaracterize plaintiff's case or conflict with defendants' own evidence. Defendant Sneed's reply is based on three issues. They are as follows:

1. Whether defendant Sneed's assertion that the number of shots fired is dispositive on this motion for summary judgment.
2. Whether the reasonableness standard cited by defendant Sneed is applicable to the facts in this case.
3. Whether defendant Sneed's characterization of Freddie Swope is appropriate.

In fact, as demonstrated by the affidavit of Dr. Dennis Powell filed simultaneously herewith, the conduct of defendant Sneed was unreasonable both in terms of continuing to use deadly force and in terms of his failure to use lesser means that were available to him. (See Affidavit of Dennis Powell, Ph.D. dated August 18, 1993).

I. FACTS PERTAINING TO WHETHER DEFENDANT SNEED ACTED AS A REASONABLE OFFICER ARE MATERIAL, GENUINE, AND OUTCOME DETERMINATIVE.

Defendant Sneed failed to act like the reasonable officer under similar circumstances and therefore should not be granted summary judgment. Contrary to defendant Sneed's assertion that no "outcome determinative" facts are in dispute, several key facts are in dispute. First, contrary to defendant Sneed's argument, there is a question as to whether his actions were reasonable. Defendant Sneed cites *Graham v. Conner*, 490 U.S. 386, 109 S.Ct. 1865,

104 L.Ed.2d 443 (1989) and *Ellis v. City of Indianapolis*, 800 F.Supp. 733 (S.D. Ind. 1992) in support of his contention that his motion for summary judgment should be granted. However, in this case, unlike *Graham* or *Ellis*, the question of whether officers could have disagreed on the appropriate action to be taken is inappropriate. In *Ellis*, the situation involved a fleeing felon. In this case, defendant Sneed shot and killed the very person who requested his assistance. Furthermore, the court in *Ellis* stated:

> A person in Wynalda's position who had just been struck by an object 'lofted' by a *burglary suspect* would have good reason to suspect that Ellis posed a danger to Wynalda and those he might encounter during his escape. *Ellis*, 800 F.Supp. at 740. (emphasis added)

Defendant Sneed never perceived Jacques Brooks as a fleeing felon and admitted that he assumed she had made the 911 call. Accordingly, the standard for a reasonable officer cited in *Graham* and *Ellis* is not applicable since this was not a situation involving a fleeing felon.

II. DEFENDANT SNEED'S CONTINUED USE OF DEADLY FORCE IS IN QUESTION AND NOT THE NUMBER OF SHOTS FIRED.

Defendant Sneed argues that because Jacques Brooks would have died as a result of the first or second gunshot wound, shots 3, 4 and 5 have no bearing on the issue of whether defendant Sneed was reckless, and grossly negligent in continuing to fire at Jacques Brooks after any "possible" threat was gone. Not only is there no legal support for defendant Sneed's contention, he also makes

several key misstatements of fact to support his killing Jacques Brooks.

First, defendant Sneed states that it is undisputed that Jacques Brooks assumed an aggressive stance, and threatened to kill defendant Sneed. Freddie Swope observed the entire encounter between Jacques Brooks and defendant Sneed and never saw Jacques Brooks make an aggressive move or gesture towards defendant Sneed.

Second, defendant Sneed stated himself that he assumed Jacques Brooks was talking about Freddie Swope when she stated, "I'm going to kill him" (not "Kill him," as stated by defendant Sneed). (Sneed Disposition at p. 193, ln. 17). Since Jacques Brooks was talking about her uncle, Freddie Swope, and not defendant Sneed, the "demonstration was obviously" *insufficient* to place a reasonable officer in fear of his life. Again the affidavit of Dr. Dennis Powell filed simultaneously herewith directly states that the use of deadly force was "excessive and unnecessary." (Dennis Powell Affidavit, p. 4).

Third, defendant Sneed erroneously asserts that "[a]ll experts in the case have reached the same conclusion that Sneed was justified in firing at Jacques Brooks." Both Phillip Davidson and David K. Wheaton disagree and state that at least the third through fifth shots were an excessive use of deadly force. None of these experts say in their affidavits that defendant Sneed should have shot Jacques Brooks.

In addition, regardless of the number or deadliness of shots this lawsuit is not only about the physical injury and wrongful death of Jacques Brooks, it is also a lawsuit for deprivation of civil rights. The Sneed response does

not address this issue when it argues that Jacques Brooks would have died regardless.

Defendant Sneed also asserts that plaintiff's reliance on *Russo v. Cincinnati*, 953 F.2d 1036 (6th Cir. 1992) is misplaced. Again, defendant Sneed misunderstands the significance and application by *Russo* to the facts at hand. Contrary to defendant Sneed's argument that *Russo* is inapplicable because there were "several distinct and separate episodes of both tasing and shooting" that occurred "at several identifiable intervals." The facts in *Russo* are applicable because force was used after the plaintiff no longer posed a threat. In this case, Jacques Brooks recoiled in a defensive reflex after initially being shot (Sneed Deposition at p. 7, ln. 20). At this point, defendant Sneed crossed over the line that separates reasonable and unreasonable police behavior.

/s/ L. D. Woods
Larry D. Woods
121 Seventeenth Avenue South
Nashville, Tennessee 37203
(615) 259-4366
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been forwarded by United States mail, first class postage prepaid, to Kennetha Sawyers, Esq., Martha Zendlovitz, Esq., James L. Charles, Esq., 204 Metropolitan Courthouse, Nashville, Tennessee 37201 and to John M.L. Brown, Esq., 221 Fourth Avenue, North, Second Floor, Nashville, Tennessee 37219 on or before this 18th day of August, 1993.

/s/ L. D. Woods
Larry D. Woods

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES Q. BROOKS (Deceased), Formerly a Citizen and Resident of Davidson County, Tennessee, and HELEN BROOKS, a Citizen and Resident of Davidson County, Tennessee, Individually, and as The Administratrix for the Estate of JACQUES BROOKS, Deceased, Plaintiffs, VS. WILLIAM SNEED, Individually and In His Capacity As A Police Officer for the Metropolitan Government of Nashville and Davidson County, Tennessee, and THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE, Defendants.	NO. 3:90-0917 (JUDGE WISEMAN)

AFFIDAVIT

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

After being duly sworn, I, David K. Wheaton, Ph.D. do hereby affirm the following:

1. For the past fifteen years I have been a Professor of Criminal Justice and Coordinator of the Graduate Studies Program in the Department of Criminal Justice at Tennessee State University, Nashville, Tennessee. I teach in the area of Law Enforcement and Corrections. I have served on various criminal justice planning commissions both at the local and state level in Oklahoma and North Carolina. I hold expertise in two areas, law enforcement and corrections. I was chief field investigator for the Eastern Oklahoma Economic Development District for law enforcement planning. I also served on the Oklahoma Planning Commission for Corrections. Since I have been in Nashville, I have been a consultant to the state law enforcement Training Academy and the Davidson County Sheriff's department. In 1987 I authored an operations and training manual in law enforcement published by the State of Tennessee that was used at the State Law Enforcement Training Academy. Prior to coming to Tennessee, I was a special law enforcement investigator for the Boone County Sheriff's Department in Columbia, Missouri and was also the in-service training officer. I have worked with various committees and commissions during the Law Enforcement Assistance Administration era which made recommendations to state and local levels of government concerning law enforcement training and accreditation requirements. I have also served in the past as an expert witness in both Law Enforcement and Corrections. My curriculum vitae is attached.

2. I have reviewed the statements made by Officer William G. Sneed as well as all other pertinent documents and statements and findings made by others that have been filed as documents to this case. I have reviewed the

statements and affidavits of Robert E. Kirchner, James F. Fyfe, and David M. Grassi. All of my comments pertaining to this case are based upon these reports.

3. The use of deadly force in this case was a judgment call made by Officer Sneed. What I mean by that is given the same set of circumstances other police officers might have judged the situation differently and handled the incident without the use of lethal force. The circumstances called for judgment and was not necessarily clear cut as in cases where threat to life from a firearm is present. Every officer is taught that a knife can be a lethal weapon within a 21 foot radius. However, it is *not* unreasonable for officers confronted with a small person in a condition of anger and fear to exercise a judgment not to use deadly force.

According to the guidelines on deadly force of the Metro Police Department and the Tennessee state statutes defining lethal force and self-defense, the officer acted up to a *point* within the purview of the law and I am in agreement with the other two experts whose depositions I have read. What I am in disagreement about is what the other two experts did not comment on and that was shooting at the victim five times. In my judgment given the circumstances of this case *excess of force* was used. Officer Sneed based upon his own testimony and other documents reviewed by me crossed over the statutory definition and *exceeded* his authority in this instance by shooting Ms. Brooks five times, four of which entered the body. Based upon the forensic report, the other reports and the fact that the officer in his own sworn testimony claims that his 9mm semi-automatic Smith & Wesson was in the *single action mode* that there was sufficient time

after the first two shots to determine whether or not the victim was still a present threat to his life or the lives of others. Based on industry information there is no indication in the literature that a flash bulb effect could have occurred to prevent Officer Sneed from determining whether or not after the first two rounds that he fired from his weapon that Ms. Brooks was no longer a lethal threat. In fact, based upon his own testimony it would have been impossible given the description that he has given in his sworn statement for him to ascertain that Ms. Brooks' feet were *"still planted firmly on the ground"* after the first shot and *"still planted firm on the ground"* after the second shot, unless Officer Sneed was sitting in such a position in his automobile to be able to give a complete view of the victim's body which would include her feet. He would have to be sitting in such a position to be able to determine whether or not her feet were still on the ground after he pulled off the first and second round. Rather the reports show that in all probability Officer Sneed shot Ms. Brooks from a reclined position through the window striking her, according to Officer Sneed, in the chest. However, the autopsy report and photographs indicate he shot her in the right side just beside the breast indicating she was turning away from the gun as she saw the firearm being pointed at her. As she begins to turn from the agony of the wound she does what all normal human beings do in a situation of extreme pain and injury which is to turn and get out of the way. Officer Sneed either sat up from his position continuing to fire, striking her twice in the right side as she is falling and then twice in the back. For him to be able to do this he had to have come up out of his seat following the target

until it hit the ground or he was already sitting up in full view of her body to know that her feet did not come off the ground when he shot her the first two times. I would like to say emphatically that the Tennessee statutes talk about necessary force and reasonable force and stresses in the statute that force should only be used when all other options have been exhausted. The statute also goes on to say that no "intent to kill" or "inflict great bodily harm" exists. That simply means in my professional judgment that the [act] is to remove a potentially lethal situation from occurring to the person the deadly force is directed to or other innocent parties. The state of mind or the [intent] is not to kill. However in acting in a professional manner to remove the potentially lethal threat a life is taken the law provides for such a justification. I feel that this is the major point in this case. At what point did Officer Sneed cross over from removal of the deadly force threat to the intent to kill. I think what we see here is what I call the Clint Eastwood Syndrome. You put one or two final rounds into the target for good measure. The Tennessee Code Annotated and law enforcement professional training does not allow for the Clint Eastwood Syndrome. Based upon that, I believe Officer Sneed exceeded his authority and recklessly and unprofessionally handled this situation.

4. State of mind. I further believe, based upon the prior 18-24 months, that a patter of excessive force in dealing with the public is indicated. Officer Sneed has been accused of using excessive force when dealing with the public in arrest situations. Two of these five incidents, which are documented, resulted in lawsuits. Officer Sneed was sued and Metro settled the cases outside of

court. Metro was deficient in their handling of Officer Sneed during this period of time. There is no indication from the record that Officer Sneed was asked by his superiors to seek counseling; furthermore, he was not transferred from patrol for a period of time as a cooling off period. Because the record does not show any attempt to defuse the stress, which I think is definitely indicated by his actions during the 18 months prior to this final incident with Ms. Brooks that Metro is at fault for not dealing with the problem of "officer burnout." The literature is full of incidences of officers who exceeded their authority, exceed their level of control and in the preponderance of the cases show a prior escalating history of force in their behavior. This problem is not unfamiliar to law enforcement, this is not an atypical, isolated phenomenon. May I just recall in the memory of our nation Los Angeles and the Rodney King beating to point out what I am talking about. Therefore, based on these two observations I am in complete agreement with the defense that Officer Sneed exceeded his authority, escalated the incident, and did act recklessly and exerted force beyond that which is given by his training and by the laws of the State of Tennessee. I further agree that Metro was grossly negligent in not intervening early on in the career of Mr. Sneed so that this tragic event could have been averted.

5. Based upon the data from the Manual that I prepared for the Law Enforcement Training Academy for the State of Tennessee which surveyed all major law enforcement bodies throughout the entire state, one area covered in the manual is lethal force. The data shows how little training police officers throughout the state have when it comes to being faced with the use of lethal force. One

small portion of the field manual used by Metro covers this and in the academy they are also given lethal force training. In my judgment the training is inadequate.

The literature tells us that over the span of 20 years the average amount of time that a person takes his weapon out of his holster other than to clean it or to take it out while he is practicing at the practice range is 1% or 2%.

The Metro policy on deadly force in my judgment is not even a policy. It is merely a general statement basically paraphrasing the Tennessee Code Annotated's definition of deadly force and self-defense. Policies of any kind act as guidelines and reflect style and philosophy of an organization in how they will deal with various issues and problems facing the organization. A policy should have within it specific substance which reflects how problems will be approached so that training and field exercises reflect the organizations positions. Based upon Metro's statement I must infer they adhere to the outmoded "gunfighter style" and "legalistic" approach to law enforcement. These two modes are out of step with modern concepts of law enforcement which emphasize *Community Oriented Policing* style more sensitive to the service and order maintenance needs of the community. The days of Wyatt Earp are over. I think the Jacques Brooks case is an example of exactly what it is I am driving at. Yes, Officer Sneed was from the legal viewpoint placed in great bodily harm. Does this then mean that he has the professional training and supportive law enforcement style which calls for him to open up at close range (eighteen inches from the target) and shoot five times into a citizen whose original call was for protection

from a crime that was being perpetrated against her. A judgment call is a professional call and professionalism is increased by training and administrative guidance and modern up-to-date law enforcement posture. Because of Metro's failure to properly supervise and train, Metro is guilty of either deliberate indifference or gross negligence.

FURTHER AFFIANT SAYETH NOT.

/s/ David K. Wheaton
DAVID K. WHEATON

Sworn to and subscribed before me
this 11th day of August, 1993.

/s/ illegible
Notary Public

My commission expires: 2-28-94

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES Q. BROOKS (Deceased), Formerly a Citizen and Resident of Davidson County, Tennessee, and HELEN BROOKS, a Citizen and Resident of Davidson County, Tennessee, Individually, and as The Administratrix for the Estate of JACQUES Q. BROOKS, Deceased,	)	
Plaintiffs,	)	NO. 3:90-0917
VS.	)	(JUDGE WISEMAN)
WILLIAM SNEED, Individually and In His Capacity As A Police Officer for the Metropolitan Government of Nashville and Davidson County, Tennessee, and THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY, TENNESSEE,	)	
Defendants.	)	

AFFIDAVIT OF PHILLIP L. DAVIDSON

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

PHILLIP L. DAVIDSON, being first duly sworn, states under oath as follows:

1. I am licensed to practice law as an attorney in Tennessee and before various courts in this area. I am the former Director of the Tennessee Law Enforcement Training Academy. In 1984 Governor Lamar Alexander appointed me Executive Secretary of P.O.S.T. (Peace Officer Standards and Training Commission of Tennessee). I am a former Sergeant at the Metropolitan Nashville Police Training Academy. I was the chief hostage negotiator. I helped found and train the S.W.A.T. team for the Metropolitan Nashville Police Department. I helped draft the hostage policy and master patrol policy for the Metropolitan Nashville Police Department. I am a contributing editor to *Encyclopedia of Police Science*. I was a professor at Belmont College in Nashville, Tennessee teaching Police Administration, Police and the Community, and Criminal and Constitutional Law. I taught at Tennessee State University in Nashville, Tennessee and taught classes in Patrol Administration and taught Police Administration at the graduate level. At Cumberland University in Lebanon, Tennessee in the Middle District of Tennessee I have taught courses in Criminal Justice, Criminal and Constitutional Law, and Terrorism. I published the first counter-terrorism book in the world entitled *SWAT* (published by Charles C. Thomas Company).

2. I received my B.S. degree from Middle Tennessee State University, an M.A. degree in clinical psychology from MTSU, a masters in Criminal Justice jointly from Tennessee State University and MTSU, a juris doctor degree in 1978 from Nashville School of Law and a Ph.D. from Vanderbilt University in 1981. I have also attended special schools such as the FBI Hostage Negotiators

School and the Police Civil Liability School at Northwestern University. A complete copy of my resume is attached hereto and incorporated by reference.

3. I have many years experience as a police officer, a professor teaching courses to law enforcement students, as a training instructor at the Metro Nashville Police Academy and at the state Law Enforcement Academy. I was involved in the organization and preparation of the training curriculum for the Metro Nashville Police Department as well as the use of deadly force policy. I have testified as an expert witness on the use of deadly force for both plaintiffs and defendants in such cases.

4. I have reviewed in the *Brooks v. Sneed* case the statements given by officer William G. Sneed, the affidavits of Fyfe, Grossi and Kirchner, and the current Metro Nashville Police Department use of deadly force policy.

5. Based upon my extensive background and knowledge in this area and based upon my review of the appropriate documents above, in my professional opinion officer Sneed overreacted and panicked to a reckless degree in shooting his 9 mm semi-automatic Smith & Wesson five times at Jacques Brooks while it was in a single action mode. Regardless of any justification for the first one or two shots at Jacques Brooks, the later shots were an excessive use of force.

6. While officers are trained and taught in the use of force to shoot center mass and while officers are trained and taught that a first shot does not necessarily stop a person, in this case when Jacques Brooks turns away from the police car or officer Sneed and officer Sneed continues to fire, those shots are reckless and illustrate a deliberate

indifference if not an intentional violation with respect to the use of deadly force.

FURTHER AFFIANT SAYETH NOT.

/s/ Phillip L. Davidson
PHILLIP L. DAVIDSON

Sworn to and subscribed before me
this 9th day of August, 1993.

/s/ illegible
Notary Public

My commission expires: 1-23-94

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES Q. BROOKS, ET AL.

VS

WILLIAM SNEED, ET AL.

No. 3:90-0917
JUDGE WISEMAN
JURY DEMAND

AFFIDAVIT OF DENNIS POWELL, PH.D.

STATE OF TENNESSEE

COUNTY OF RUTHERFORD

Dennis Powell, first being duly sworn according to law, deposes and says: I am an associate professor in the Department of Criminal Justice Administration at Middle Tennessee State University in Murfreesboro, Tennessee and I hold a doctoral degree in Criminal Justice. I have functioned as an expert witness on police training and tactics in this State. Appended as Exhibit A is a copy of my curriculum vitae.

I have reviewed numerous documents provided to plaintiff's counsel by the Office of the Davidson County District Attorney, including: a copy of the statement of Officer Bill Sneed dated March 14, 1990 about the shooting and killing of Jacques Brooks, a copy of the supplemental statement of Officer Bill Sneed dated March 26, 1990, a copy of Field Form #108 – re: Shooting of Jacques Brooks, pages 4-5, 7, 14-16, 33-34, 37-39, 50-58, 63, and 70 of Sneed Deposition describing various details of the shooting of Jacques Brooks, and officer Sneed's change of weapon use to a 9mm Automatic and subsequent training in it's use, a copy of the Affidavit of Robert E. Kirchner, a

copy of Metro Nashville's deadly force policy, and a copy of the report of the shooting review board.

I have noted from this review that the use of deadly force in this case was a discretionary choice made by officer Sneed. Meaning that given the same set of circumstances other police officers might have judged the situation differently and handled the incident without the threat to life with a firearm is present. Though police officers are taught that a knife can be a lethal weapon within a 21 ft. radius, it is not unreasonable for officers confronted with a small person in a condition of anger and fear to exercise a judgement not to use deadly force. In this incident I believe Officer Sneed's decision to use deadly force was *unreasonable* considering no other options were attempted to control the situation.

According to the guidelines on deadly force of the Metro Police Department, which are stated to be consistent with the Tennessee State Statutes, an officer may use deadly force to defend himself if he has reason to believe that such force is necessary to prevent death or great bodily harm. However, the policy notes: "an officer should make every effort to avoid a confrontation which would require the IMMEDIATE use of deadly force, until such time as assistance might be available." In this situation I believe Officer Sneed could have given himself other options.

First, according to officer Sneed's statement when he first arrived at the scene he noticed two black ladies standing on the curb with one motioning him to come toward them. Officer Sneed stated he assumed they were involved in the call and thus pulled his vehicle onto the

curb on the wrong side of the street stopping directly next to the lady. General police knowledge is that when addressing believed suspects or complainants the officer should exit his vehicle to provide him/her with more mobility and control of a situation. Had Officer Sneed parked his vehicle properly and exited it as the believed complainant approached he could have perhaps observed a knife sooner, had more accessibility to his night stick, or mace, or had an opportunity to physically restrain or stall the threat until assistance arrived as he was aware backup was on the way, rather than using deadly force.

Secondly, according to Officer Sneed's statement, upon observing the knife in Ms. Brooks left hand he pivoted in his seat and at the time drew his weapon, flipped off the safety, gripped it with both hands, but held the gun in his lap in what he called the ready position, then had time to tell Ms. Brooks to drop the knife *several* times but was cussed at. I believe this demonstrates that officer Sneed had time at this point to drop his vehicle into drive and pull forward out of range of what he believed was a threat, then exit his vehicle and attempt other means of control since there were no other persons in immediate danger. Also, most police officers are aware it is not uncommon to be cussed at or called derogatory names. It was at this same time when Officer Sneed stated he became scared and realized he had no where to go, but it is my opinion that officer Sneed placed himself in this position by his own actions or lack thereof.

The Shooting Review Board's analysis of the incident knife attempted to distance himself from it by backing as far away as possible against the arm rest in the front seat of the vehicle, then drew his weapon and held it ready in

his lap. Ms. Brooks not only refused to drop the butcher knife, but EVENTUALLY raised the weapon to assault him. It is my contention Officer Sneed at this point apparently had time to distance himself by putting the vehicle in drive and moving away from Ms. Brooks to allow him more option.

Under Section B Tactical Considerations the board states "Officer Sneed stopped short of 1613 Haynes Meade Circle to await *backup*, and this was proper. He did not initiate the confrontation. Ms. Brooks approached him." Granted it is proper police procedure on a Domestic call to await backup, However, according to Officer Sneed's statement he drove up and stopped directly next to this lady. Therefore he did not stop to await backup but placed himself in direct confrontation since he approached what he stated he believed to be the complainant alone . . . The shooting review board analysis in this section also states: Officer Sneed "attempted to distance himself from her by turning to face her and backing away from her. He drew his weapon but did not raise it." Distancing himself from the threat and drawing his weapon are appropriate defensive tactics. Attempting to roll the window up, would have put him even closer to the threat. There was no reason to call for assistance, he knew back up was on the way." Again, it is my contention that distancing himself from the threat is good procedure and Officer Sneed had time to put his vehicle in drive, and move away, this would not have placed him closer to the threat since the gear shift is on the rightside of the steering column, he wouldn't have had to lean over, it would have given him distance and time to use other options until the Known backup arrived.

My final opinion concerning this case deals with the use of *excessive force.* Tennessee Statute discusses the use of force in terms of REASONABLE and NECESSARY to terminate a posed threat; in this case I feel Officer Sneed by firing his weapon five times at Ms. Brooks at almost point blank range, and striking her four times with the first round spinning her around according to his statement, to be unreasonable and excessive.

In Officer Sneed's statement he indicated after he fired the first round he observed Ms. Brooks spin in a counter clockwise manner and he continued to fire four more times, with his next to last shot striking Ms. Brooks in the back. He further stated that he observed Ms. Brooks going down and the direction she fell. However, in his deposition, Officer Sneed stated he couldn't see the assailant from the first shot on because of a flashbulb effect, but he could see the knife blade in it's upraised position? This seems somewhat confusing but it is my opinion that Officer Sneed possibly panicked. If as Officer Sneed start to go down then he should have been aware that if Ms. Brooks spun away so did the knife and the immediate threat. The fourth round which struck Ms. Brooks in the back certainly indicates she had either spun away from the impact of being struck, or as Officer Sneed also stated in his deposition, "it was probably a recoiling or a defensive reflection on her part." Certainly if this was Officer Sneed's observation at the time of the incident that Ms. Brooks was taking a defensive position, then she was not an offensive threat.

In my judgement the firing of five rounds based on the statement of Officer Sneed was excessive and unnecessary. A possible contributing factor if Officer Sneed

panicked would be the 9mm semi-automatic weapon which requires less trigger pull pressure than a revolver since it maintains a single action position automatically after the first round is fired. Therefore, once the first round is fired, if fear or adrenalin is high, it is very easy to overkill.

This information is true and correct to the best of my knowledge.

/s/ Dennis Powell
Dennis Powell, Ph.D

Sworn to and subscribed before me
this the 18th day of August, 1993.

/s/ illegible
NOTARY PUBLIC

MY COMMISSION EXPIRES; 2-28-94

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

HELEN BROOKS,
Individually and as
Administratrix for the
Estate of JACQUES Q.
BROOKS, Deceased,

Plaintiff-Appellee,

v.

WILLIAM SNEED,

Defendant-Appellant,

THE METROPOLITAN
GOVERNMENT OF
NASHVILLE AND
DAVIDSON COUNTY,

Defendant.

No. 93-6259

ON APPEAL FROM THE
UNITED STATES
DISTRICT COURT FOR
THE MIDDLE DISTRICT
OF TENNESSEE

DEFENDANT-APPELLANT WILLIAM G. SNEED'S
PETITION FOR REHEARING
AND SUGGESTION THAT REHEARING BE EN BANC

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William G. Sneed

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REQUIRED STATEMENT FOR REHEARING EN BANC

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decisions of the Supreme Court of the United States and the United States Court of Appeals for the Sixth Circuit and that consideration by the full Court is necessary to secure and maintain uniformity of the decisions: *Hunter v. Bryant*, 502 U.S. 224, 112 S. Ct. 534, 116 L. Ed. 2d 589 (1991); *Anderson v. Creighton*, 483 U.S. 635, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987); *Tennessee v. Garner*, 471 U.S. 1, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985); *Bender v. General Motors Corp.*, 849 F.2d 608 (6th Cir. 1988) (unpub'd op.) (copy in Addendum); *Williams v. Union Carbide Corp.*, 790 F.2d 556 (6th Cir. 1986); and *Melton v. O.F. Shearer & Sons*, 436 F.2d 22 (6th Cir. 1970).

/s/ James L. Charles
by Kennetha Sawyers
James L. Charles,
Metropolitan Attorney
Attorney of Record
For William Sneed

STATEMENT OF THE ISSUES PRESENTED FOR REHEARING

1. Whether or not overlooked admissions of plaintiff resolve the issues of fact that the Court perceived as an obstacle to qualified immunity.

2. Whether or not the Court is required to make the qualified immunity determination based on the undisputed facts presented in the record.

3. Whether or not the Court misapprehended the law by treating as an issue of fact the legal issue of when it is lawful to use deadly force.

STATEMENT OF THE CASE

Plaintiff Helen Brooks filed this cause on October 19, 1990, as the mother of, and as administratrix of the estate of, Jacques Brooks. On March 13, 1990, Ms. Jacques Brooks was shot and killed by Officer William G. Sneed after she assaulted him with a butcher knife.

Named as defendants were Sneed and his employer. The Metropolitan Government of Nashville and Davidson County. The causes of action presented were deprivation of Jacques Brooks' Fourth Amendment right to be free from unreasonable seizures and her Fourteenth Amendment right of due process, pursuant to 42 U.S.C. Section 1983, and a number of state law tort claims. On July 29, 1993, the defendants filed motions for summary judgment. Plaintiff opposed the motions, and on August 24, 1993, they were denied. On September 8, 1993, defendants filed motions to reconsider the denials. On September 14, 1993, they, too, were denied, along with the Metropolitan Government's request to pursue an interlocutory appeal.

On September 17, 1993, Officer Sneed filed notice of his appeal of the denial of his qualified immunity summary judgment motion. On December 5, 1994, the decision of the district court was affirmed, per curiam. Officer

Sneed now submits this petition for rehearing and suggests that rehearing be en banc.

STATEMENT OF FACTS

Officer Sneed answered a call to intervene in a domestic dispute between Jacques Brooks and her uncle, Freddie Swope. (Appendix, p. 1) In the complaint, plaintiff avers that Jacques Brooks was armed with a knife when she approached Officer Sneed as he was seated in his patrol car (Appendix, pp. 8-10), and that "[d]uring the course of the[ir] conversation . . . , JACKIE BROOKS was standing immediately next to the Defendant, [sic] SNEED'S patrol car, with her right side facing his patrol car and the knife in her left hand at her left side. . . . [S]he advised the Defendant, SNEED, that 'I'm gonna kill him', . . . which she repeated several times." (Appendix, pp. 10, 11) Although Swope stated that he did not see Brooks raise the knife or make other movement toward Sneed (R.90: Swope 6/91 Depo at p. 82-83), he also said that he did not see her move her hands in any fashion, did not recall if he looked away and never saw or knew that she had the knife – even though she had chased him out into the street with it. (R.91: Swope 3/93 Depo at pp. 60, 66, 71, 75-76) Brooks' two nieces heard Sneed tell Brooks that she was not going to kill anybody, and saw Brooks turn towards Sneed and pass the knife from hand to hand in the manner described by Sneed. (R.92: Tequila Brooks Depo at p. 40; R.94: Jasaundra Brooks 6/91 Depo at p. 74; R.97: Sneed Aff. at p. 3-4) Sneed testified that Brooks then swore at him and raised the knife, in her left hand, over her head to stab him. (R. 97: Sneed Aff. at p. 3) Sneed fired five shots within two seconds. (R.97: Sneed

Aff. at p. 4) According to the medical examiner, Brooks' wounds corresponded to Sneed's description of her position when he fired. (R.99: Harlan Aff. at p. 2)

Plaintiff's expert witness, David K. Wheaton states that Officer Sneed was placed in great bodily harm by Brooks. (Appendix, pp. 33) Her expert Phillip L. Davidson also acknowledges that Sneed was justified in firing on Jacques Brooks. (Appendix, pp. 44) Plaintiff's final expert witness, Dennis Powell, likewise does not dispute that Officer Sneed was presented with a threat of serious bodily harm. (Appendix, pp. 87-90) The defendants two expert witnesses state that Officer Sneed's use of deadly force was lawful. (Appendix, pp. 55, 72-74).

GROUNDS FOR REHEARING

Appellant seeks a rehearing on the grounds that significant points of fact and law have been overlooked or misapprehended by the Court. These grounds are set forth with particularity below.

I. Overlooked Admissions of Plaintiff Resolve the Issues of Fact Perceived by the Court as an Obstacle to Qualified Immunity.

The Court identified three material disputes of fact as preventing it from determining whether a reasonable officer could have had probable cause to believe that Jacques Brooks presented a serious threat of personal harm. The factual issues are:

1) whether Brooks possessed a knife (Appendix, p. 2);

2) whether and to what extent Brooks threatened Sneed with the knife (Appendix, p. 4-5), and;

3) Whether Sneed acted reasonably in shooting Brooks. (Appendix, p. 2)

A. It is undisputed that Brooks was armed with a knife when she approached Sneed, who was in his patrol car.

It is undisputed that Jacques Brooks approached Officer Sneed, in his patrol car (Appendix, pp. 8-10), and that "[d]uring the course of the[ir] conversation . . . , JACKIE BROOKS was standing immediately next to the Defendant, [sic] SNEED'S patrol car, with . . . the knife in her left hand at her left side. . . . " (Appendix, pp. 8, 10-11) because these averments are in the complaint and thus are admissions by the plaintiff. Fed. R. Evid. 801(d) (2). Moreover, at oral argument before this Court, plaintiff's counsel admitted that Jacques Brooks had a knife when she approached Officer Sneed. Accordingly, this fact is uncontroverted.

B. It is undisputed that a reasonable officer could have believed that Brooks presented a threat of serious bodily harm.

Plaintiff's admissions resolve any factual questions about whether a reasonable officer would have had probable cause to believe that Brooks presented a serious threat of personal harm to an officer in Sneed's position.

1. Plaintiff admits that when Brooks approached Sneed with the knife she was

making threats to kill.

Plaintiff admits that when Jacques Brooks was standing immediately next to Sneed, in his patrol car, with the knife in her hand, "she advised the Defendant, SNEED, that 'I'm gonna kill him', . . . which she repeated several times." (Appendix, pp. 10-11) These averments, in the complaint, are admissions by the plaintiff. Fed. R. Evid. 801(d)(2).

2. Plaintiff's and defendant's experts agree that Brooks presented a threat of serious bodily injury.

Plaintiff's and defendant's experts agree that Brooks presented a threat of serious bodily injury to Sneed. Plaintiff's expert David Wheaton states:

> I have reviewed the . . . affidavits of . . . James F. Fyfe and David M. Grassi [sic] [defendants' experts]. . . . According to the guidelines on deadly force of the Metro Police Department and the Tennessee state statutes defining lethal force and self-defense, the officer acted up to a *point* within the purview of the law and I am in agreement with the other two experts [Fyfe and Grossi] whose depositions I have read. . . . Yes, Officer Sneed was from the legal viewpoint placed in great bodily harm."

(Appendix, pp. 32-33) (emphasis in original). Wheaton agrees with defendants' expert witness Fyfe's opinion, which states:

> Once within arm's reach of him, . . . Jacques Q. Brooks, surprised Officer Sneed by producing a

> large knife, waving it threateningly, and refusing to drop it or stop approaching Sneed upon Sneed's requests and commands. . . . Ms. Brooks produced a knife almost as soon as Officer Sneed encountered her, raised it and approached him threateningly. . . . In this case, there were reasonably available to Officer Sneed no means of self-defense short of deadly force- . . . . Based on the facts and circumstances of this event, it is my opinion that Officer Sneed was *authorized to use deadly force in self defense,* under both generally accepted United States police custom and practice and the policies of the Metropolitan Police Department, as well as the parameters of prevailing case law, particularly the *Garner* case.

(Appendix, pp. 52-55) (emphasis in original). Wheaton also agrees with defendants' expert witness Grossi, who states:

> Any reasonable experienced police officer would have perceived her demeanor, her oral threats to kill "him", her state of agitation, her refusal to drop the knife as a threat to his or her safety. . . . [I]t is apparent that deadly force was the only option available to Officer Sneed. Any other non-lethal for options would have been impossible to employ or ineffective in stopping the threat. . . . Upon presentation of the knife by Ms. Brooks in the fashion described, any reasonably prudent officer would resort to deadly force to terminate the threat.

(Appendix, pp. 72-74) The affidavit of plaintiff's expert Phillip L. Davidson clearly acknowledges that Sneed was justified in firing on Jacques Brooks, only claiming excessive force in the last three shots of the two second burst

of five bullets that was fired.[1] (Appendix, p. 44) Plaintiff's final expert witness, Dennis Powell, also does not dispute that Officer Sneed faced a threat of serious bodily harm. (Appendix, pp. 87-90) He simply states that other officers may have responded in a manner different than did Sneed (Appendix, pp. 87-88), a hypothesis that has no hearing whatsoever on whether Officer Sneed could reasonably believe that he was threatened with serious bodily harm. These statements by plaintiff's expert witnesses, as is discussed in the next subsection, are binding on her.

3. The statements of plaintiff's experts are admissions of fact on plaintiff's behalf.

The affidavits of plaintiff's experts are admissions by her agents and/or admissions against her interests. Fed. R. Evid. 801(d)(2); *Bender v. General Motors Corp.*, 849 F.2d 608 (6th Cir. 1988) (unpub'd op.) (copy in Addendum); *Williams v. Union Carbide Corp.*, 790 F.2d 556 (6th Cir. 1986); *Melton v. O.F. Shearer & Sons*, 436 F.2d 22 (6th Cir. 1970).[2] Accordingly, the pleadings and affidavits filed by

---

[1] "[I]f the last shot was intentional, and may seem to have been unnecessary when considered in cold blood, the defendant would not necessarily lose his immunity if it followed close upon the others, while the heat of the conflict was on, and if the defendant believed that he was fighting for his life." *Brown v. United States*, 256 U.S. 335, 343, 41 S. Ct. 501, 502, 65 L. Ed. 2d 1 (1921). *See also Russo v. City of Cincinnati*, 953 F.2d 1036 (6th Cir. 1992) (court does not analyze the reasonableness of each individual bullet fired in a burst of bullets).

[2] *Accord: Collins v. Wayne Corp.*, 621 F.2d 777 (5th Cir. 1980); *United States v. Lykes Bros. S.S. Co.*, 432 F.2d 1076 (5th Cir. 1970);

plaintiff must be regarded as binding substantive admissions that resolve any dispute over whether Jacques Brooks presented Officer Sneed with a lethal threat. That plaintiff has manifested an adoption or belief in the truth of the statements cannot be questioned, because it was she who made them a part of the record in this cause by filing them with the district court.

II. The reasonableness of Sneed's reaction in self-defense was improperly characterized as a factual issue.

The reasonableness of Sneed's self-defense shooting response was improperly characterized by the Court as a factual issue. (Appendix, p. 5) It is a question of law for the court. *Hunter v. Bryant*, 502 U.S. 224, 112 S. Ct. 534, 536, 116 L. Ed. 2d 589 (1991). Disputes over some details of what happened during the Brooks-Sneed encounter are irrelevant to the qualified immunity decision if regardless of the resolution of those factual disputes an officer *could* have reasonably believed that his actions were lawful. *Rich v. City of Mayfield*, 955 F.2d 1092 (6th Cir. 1992) (disputed factual issue disregarded; relevant issue was whether decedent who hung himself had particularized right to be cut down (under the generalized right to be free from deliberate indifference to serious medical needs)); *Gooden v. Howard*, 954 F.2d 960, 965 (4th Cir. 1992) (en banc).

Brown & Root, Inc. v. American Home Assurance Co., 353 F.2d 113 (5th Cir. 1965), *cert. denied*, 384 U.S. 943, 86 S. Ct. 1465, 16 L. Ed. 2d 541 (1966).

Hunter clearly establishes that it is the duty of the court to make the legal determination of the objective reasonableness of the actions of an officer requesting qualified immunity, based on the undisputed facts and settled law, and that it is not a factual determination left to the jury. *Hunter,* 112 S. Ct. at 536. Moreover, the Court may not avoid its duty by simply stating that it is settled law that police officers may not use excessive force. *Anderson v. Creighton,* 483 U.S. 635, 640, 107 S. Ct. 3034, 3039, 97 L. Ed. 2d 523, 531 (1987). That would reduce the settled law inquiry to a meaningless generalization. *Id.* Instead, Ms. Brooks' Fourth Amendment right against the use of unreasonable force must be particularized to the facts confronting Officer Sneed, and lawlessness of his actions under the circumstances must be readily apparent if he is to be denied qualified immunity. *Id.* The question in this cause is whether there was settled law giving Ms. Brooks a right not to be subjected to deadly force when she confronted Officer Sneed with the knife.

III. Sneed is entitled to qualified immunity as a matter of law.

In its opinion, the Court held, "Even if this court assumed that Brooks raised the knife toward Sneed, it remains unclear whether the facts giving rise to Sneed's fear were such that a reasonable officer could have, as a matter of law, found probable cause to believe that Jacques Brooks presented as serious threat of personal harm. (Appendix, p. 5) But in the presence of a deadly threat, the use of deadly force is reasonable as a matter of law. *Tennessee v. Garner,* 471 U.S. 1, 11, 105 S. Ct. 1694, 85 L. Ed. 2d 1, 10 (1985). If there is probable cause to believe that a

threat of serious personal injury is present, Sneed is entitled as a matter of law to use deadly force. *Id.* As Justice Holmes observed over seventy years ago, "Detached reflection cannot be demanded in the presence of an uplifted knife." *Brown v. United States*, 256 U.S. 335, 343, 41 S. Ct. 501, 502, 65 L. Ed. 2d 1 (1921).

All five of the parties' experts agree that Sneed was confronted with a deadly threat. (Part I.B.2., *supra*, at pp. ___) Moreover, plaintiff's experts Wheaton and Powell stated that police offices are properly trained that a person who is armed with a knife and standing within 21 feet of an officer presents a threat of serious bodily harm or death. (Appendix, pp. 33, 88) Notably, raising the knife was only one of a number of factors which led the experts to conclude that there was a reasonable belief a deadly threat: Brooks' demeanor, her oral threats to kill "him," her state of agitation, her refusal to drop the knife, and her close proximity to Sneed. (Appendix, pp. 10-11, 72, 88-89) Under these factors, a police officer reasonably could have thought that a deadly threat was presented. The Court errs in holding that even if the knife were uplifted, a jury must determine whether there was a deadly threat.

SUGGESTION FOR REHEARING EN BANC

Rehearing en banc is suggested on the grounds that the panel's ruling is inconsistent with the decisions of the United States Supreme Court and of this Court. Specifically, and as is addressed in the grounds for rehearing, the ruling does

not recognize that under the law of this Court, the admissions of plaintiff's and her experts are binding on the plaintiff. *Williams v. Union Carbide Corp.*, 790 F.2d 556 (6th Cir. 1986); *Bender v. General Motors Corp.*, 849 F.2d 608 (6th Cir. 1988) (unpub'd op.) (copy in Addendum); *Melton v. O.F. Shearer & Sons*, 436 F.2d 22 (6th Cir. 1970).

As is also addressed in the grounds for rehearing, the ruling is inconsistent with the Supreme Court cases of *Hunter v. Bryant*, 502 U.S. 224, 112 S. Ct. 534, 536, 116 L. Ed. 2d 589 (1991), and *Tennessee v. Garner*, 471 U.S. 1, 11, 105 S. Ct. 1694, 85 L. Ed. 2d 1, 10 (1985). *Hunter*, which reversed the Ninth Circuit for failing to rule on qualified immunity on the basis of factual disputes in a manner similar to this Court's ruling herein, imposes a duty on the Court to make the qualified immunity determination. *Anderson v. Creighton*, 483 U.S. 635, 107 S. Ct. 3034, 97 L. Ed. 2d 523 (1987), requires the Court to compare the settled law with the facts and circumstances of the specific use of force, and prevents the Court from denying qualified immunity by relying on the general axiom that excessive force violates the Fourth Amendment. *Garner* establishes that an officer is entitled to use deadly force in the face of a threat of serious bodily harm, which the Court contradicted by indicating that the use of deadly force may not be reasonably in response to a threat of serious bodily harm.

CONCLUSION

Plaintiff's admissions resolve all material issues of fact recognized by the court as presenting a bar to the resolution of the question of qualified immunity. The

reasonableness of Sneed's action was improperly characterized as a factual issue instead of as a question of law. Plaintiff's admissions establish the presence of the knife when Brooks confronted Sneed, and the existence of a lethal threat. Given the standards articulated by the United States Supreme Court, this cause is most appropriate for the grant of qualified immunity. Rehearing en banc is appropriate because of the present lack of conformity with Sixth Circuit and Supreme Court opinions. For these reasons, the petitioner respectfully requests that this Court grant a rehearing, and suggests that rehearing be en banc.

Respectfully submitted,

THE DEPARTMENT OF LAW OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY JAMES L. MURPHY III, # 9589 DIRECTOR OF LAW

/s/ James L. Charles by KS
James L. Charles, # 9007
Metropolitan Attorney

/s/ Kennetha Sawyers
Kennetha Sawyers, # 10294
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/s/ John M. L. Brown by KS
John M. L. Brown, # 5438
2nd Floor,
221 Fourth Avenue North
Nashville, TN 37219
(615) 242-3348

CERTIFICATE OF SERVICE

I certify that two copies of the foregoing Petition have been mailed to Mr. Larry Woods and Ms. Michele Collins, 121 Seventeenth Avenue South, Nashville, TN 37203, on this 19th day of December, 1994.

/s/ Kennetha Sawyers
Kennetha Sawyers

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES Q. BROOKS, ET AL.	)	
VS.	)	No. 3:90-0917
	)	JUDGE
WILLIAM SNEED, ET AL.	)	WISEMAN JURY
STATE OF NEW JERSEY	)	DEMAND
	)	
COUNTY OF MERCER	)	

AFFIDAVIT OF JAMES J. FYFE

After being duly sworn, I, James J. Fyfe, Ph.D. do hereby affirm the following:

1. I am a professor of criminal justice at Temple University in Philadelphia, Pennsylvania. I have also been employed as a professor in the School of Public Affairs at American University in Washington, D.C. I have been a senior fellow at the Police Foundation and have served on the Commission on Accreditation for Law Enforcement Agencies since 1989. Before becoming a professor, I was employed for sixteen (16) years as a police officer, sergeant, and lieutenant with the New York City Police Department. I have been qualified as an expert in both state and federal courts in police tactics, police administration, police supervision, and police training, and served as the Garner family's police expert in *Tennessee v. Garner*. My curriculum vitae is attached.

2. I have reviewed the training files and complaint history of Officer William G. Sneed, as well as the lawsuit filed against him.

3. Nothing in this officer's job performance was sufficient to put the officials of the police department or the city on notice of any "propensity for violence of for the use of unreasonable force by this officer." It is unreasonable to expect that police patrol officers will never be involved in arrest situations requiring some use of force. Based on my review of the complaint history of Officer Sneed, there is no indication that Officer Sneed regularly or customarily employed the use of unreasonable force, and a propensity for violence or other misconduct is *not* demonstrated by the nature or volume of complaints.

4. The allegations contained in the two (2) lawsuits that arose out of one incident were not sufficient to infer or believe that Officer Sneed demonstrated a propensity for violence. Moreover, the minimal amount for which these actions were settled suggests that the action was settled on the basis of its nuisance value.

5. I have reviewed the statements of the parties and the contents of the investigative file compiled in connection with the shooting of Jacques Brooks. Based on the following, I conclude that Officer Sneed responded properly to the threat presented by Ms. Brooks:

> a. Prevailing professional police standards in Tennessee and throughout the United States basically require that four questions be answered negatively before a police officer's use of deadly force in defense of himself or herself may be viewed as reasonable and necessary:
>
> > 1) Did the officer unnecessarily force a confrontation or otherwise needlessly put him or herself into precarious circumstances from which he could predictably extricate

himself or herself only by resorting to deadly force?

2) Was there reasonably available to the officer any indication that the person confronting him or her was not an imminent danger to the officer's life and safety?

3) Were there reasonably available to the officer any means of self-defense short of deadly force?

4) Does objective physical evidence or other dispositive evidence contradict the officer's account of the incident?

b. In this case, the answers to all four of these questions are negative:

1) Officer Sneed did not force a confrontation or unnecessarily put himself in harm's way. Instead, while responding to assist at a dispute call, he was signalled to the side of the road by two women who then gave no indication that they presented any danger to him or to anybody else. Once within arm's reach of him, one of these women, Jacques Q. Brooks, surprised Officer Sneed by producing a large knife waving it threateningly, and refusing to drop it or to stop approaching Sneed upon Sneed's requests and commands.

2) There was nothing in the information reasonably available to Officer Sneed at the time he shot Ms. Brooks to indicate that she was not an imminent danger to his life and safety.

a) The fact that Ms. Brook's anger may been caused by her uncle or was

primarily directed at him was not known to Officer Sneed because she gave him no time to make such an inquiry. Instead, Ms. Brooks produced a knife almost as soon as Officer Sneed encountered her, raised it and approached him threateningly.

b) Even had Officer Sneed somehow learned that Ms. Brooks had been angered by her Uncle, this information would have been irrelevant in his assessment of the immediate threat she presented to him waving and raising a knife, by approaching him threateningly, and by refusing to drop it or to stop her approach on his requests and commands.

c) In these circumstances, the fact that Ms. Brooks may have said "I'm going to kill him," rather than "I'm going to kill you" is irrelevant to any professional assessment of the reasonableness of this shooting. Officer Sneed determined that Ms. Brooks presented an imminent threat to himself as she approached him with a knife raised threateningly, refusing to drop it or to stop upon his requests and commands.

d) For two reasons, the fact that Ms. Brooks was mentally retarded is irrelevant to any professional assessment of the reasonableness of this shooting. First, Officer Sneed had no way to know this at the time he shot Ms. Brooks. Second, even had he known that Ms. Brooks was retarded,

this information would have provided no basis for alternative action. Both police officers and citizens have been killed by mentally retarded persons and, in these circumstances, Officer Sneed's primary concern had to be Ms. Brooks' dangerous conduct rather than its organic causes.

3) In this case, there were reasonably available to Officer Sneed no means of self-defense short of deadly force.

a) Surprised in his car with its driver side window open, Sneed pivoted his body and retreated as far away as possible from Ms. Brooks and her knife. Still, this provided Sneed little protection because, as a general rule, officers are trained that people threatening with knives can easily be lethal within a radius of 21 feet.

b) Sneed could not open the passenger door of the car without endangering himself by diverting his attention from Ms. Brooks as she waved a knife threateningly within easy striking distance.

c) Sneed could not close the driver's side window of his car to protect himself from Ms. Brooks without reaching to its control on the driver side door and bringing himself into even closer proximity to her and her knife.

d) Sneed could not move his car's transmission lever from its "Park" position and attempt to drive away without

bringing himself into even closer proximity to Ms. Brooks and her knife.

e) No American police department in my experience has ever required officers to attempt to protect themselves against potentially lethal attacks by using such lesser means of force as wrestling holds, batons, or chemical sprays. All these lesser means of force are intended for use by officers to defend themselves against adversaries who are not armed with deadly weapons such as knives.

4) No dispositive evidence, physical or otherwise, contradicts Officer Sneed's account of this incident.

6. Based on the facts and circumstances of this event, it is my opinion that Officer Sneed was *authorized to use deadly force in self defense,* under both generally accepted United States police custom and practice and the policies of the Metropolitan Police Department, as well as the parameters of prevailing case law, particularly the *Garner* case.

7. Based on my review of the training files and records, I conclude that the training provided to Officer Sneed by the Metropolitan Government was more than adequate. The records reflect extensive training regarding the appropriate applications of force and the instances wherein deadly force may be employed. The training records also reflect adequate training regarding the level of force necessary and the techniques to prevent escalation of force utilized. There is no indication of training deficiency in Officer Sneed's training. Based upon my

review of all the training provided, there is no indication of any training deficiency which would have caused the shooting of Jacques Brooks. Officer Sneed was properly trained with regard to the use of his weapon, a 9 millimeter Smith and Wesson semi-automatic pistol. Further, he was properly trained in the appropriate uses of force, particularly deadly force.

And further affiant sayeth not.

/s/ James J. Fyfe
James J. Fyfe

Sworn to and subscribed before me, a Notary Public, this 21 day of July, 1993.

LEONIE D. SKELTON
NOTARY PUBLIC STATE OF NEW JERSEY
MY COMMISSION EXPIRES 10/2/96

/s/ Leonie D. Skelton
NOTARY PUBLIC

My Commission Expires:

LEONIE D. SKELTON
NOTARY PUBLIC STATE OF NEW JERSEY
MY COMMISSION EXPIRES 10/2/96

CERTIFICATE

This is to certify that a copy of the foregoing Affidavit has been mailed/delivered to Mr. Larry Woods and Ms. Michelle Collins, Woods & Woods, 121 17th Avenue South, Nashville Tennessee 37203, this ___ day of ___, 1993.

/s/ _____
Kennetha Sawyers

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES Q. BROOKS, ET AL.	)	No. 3:90-0917
VS.	)	JUDGE WISEMAN
	)	JURY DEMAND
WILLIAM SNEED, ET AL.	)	

AFFIDAVIT OF DAVID M. GROSSI, SR.

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

After being first duly sworn, I do hereby affirm the following:

1. That I am currently employed as a senior instructor for Calibre Press, Inc., Northbrook, Illinois. My duties include preparation of instructional materials; development of lesson plans and presentations of training sessions and seminars for law enforcement officers nationwide on topics such as the appropriate use of force and use of deadly force.

2. I have been employed in law enforcement either as a police officer or trainer since 1970.

3. I have published or contributed to numerous articles and testified as an expert witness in both state and federal courts on the appropriate use of force; adequacy of training; use of certain types of firearms and transition to the use of semi-automatic weapons for police officers. (Vitae attached as Exhibit A).

4. I have reviewed the facts and circumstances of this case and I have considered the following undisputed facts in arriving at my conclusions:

A. That Officer Sneed was dispatched on a domestic call at 1613 Haynes Meade Circle at approximately 7 p.m., March 13, 1990.

B. That he encountered a young, female black person walking up the street upon his arrival. Her clothes were somewhat disheveled.

C. That he asked her to approach his vehicle. His driver side window was rolled down and he began to engage in conversation, attempting to determine whether she had called the police.

D. That she appeared to be in an agitated state. During the brief conversation, he noticed that she was armed with a butcher's knife and she stated that "she was going to kill him" not specifically indicating who she mean by "him." The knife was a total of ten and a half inches long. The blade was six inches long from tip to handle.

E. That she was in very close proximity to his vehicle window, refused to drop the knife when so directed and raised the knife sufficiently to strike Officer Sneed if she desired.

F. That Officer Sneed had no independent knowledge regarding the female subject and no family member present attempted to warn him that she was armed or that she was mentally impaired.

5. Any reasonable experienced police officer would have perceived her demeanor, her oral threats to kill

"him", her state of agitation, her refusal to drop the knife and her raising the knife as a threat to his or her safety. A reasonable police officer would have considered it necessary to use sufficient force to prevent an attack upon his/her person occurring in this fashion.

6. Officer Sneed was unable to utilize non-lethal force as the result of two factors:

A. the suddenness of the attack upon him,

B. the fact that he was unable to safely exit the vehicle and therefore trapped therein.

7. Officer Sneed was unable to disengage from the subject encounter because his only options would have necessitated him getting closer to the threat of Ms. Brooks' knife. It was impossible for him to roll up his window or drive the vehicle away while maintaining a safe distance from the threat. Likewise, the situation presented no opportunity to use a baton because of the proximity of Ms. Brooks and Officer Sneed's position in the vehicle.

8. Based on the facts of this case, it is apparent that deadly force was the only option available to Officer Sneed. Any other non-lethal force options would have been impossible to employ or ineffective in stopping the threat, and furthermore an attempt to disengage would have resulted in a greater danger by placing him closer to the threat of Jacque Brooks' knife.

9. The speed of this attack (sudden assault), the proximity of the threat (distance), the aggressive action (threat) of raising the knife towards officer Sneed and the

refusal (resistance) to drop the knife when ordered, demonstrate that deadly force was the only reasonable response that Officer Sneed could have used to save his own life.

10. Upon presentation of the knife by Ms. Brooks in the fashion described, any reasonable prudent officer would fear for his life and safety and would resort to deadly force to terminate the threat.

11. Police officers are routinely trained to aim for center mass (the center of the target) and to shoot until the threat ends. The threat would be considered terminated when Ms. Brooks was no longer holding the knife or no longer positioned close enough to pose a physical threat.

12. Due to lighting conditions, it was impossible for Officer Sneed to immediately determine whether Ms. Brooks had been hit. Since she did not immediately fall, but rather spun away from the shots, Officer Sneed could not ascertain whether she was still armed with the knife. It was therefore reasonable pursuant to standard police practices for him to continue to shoot until she fell. Under these circumstances, a reasonably prudent officer would perceive a threat to his/her safety as long as Ms. Brooks was standing in close proximity to the driver's side door of his vehicle armed with a ten inch kitchen butcher's knife. It was not unreasonable for Officer Sneed to continue to perceive a threat until Ms. Brooks' fell.

13. I conclude that Officer Sneed responded to Jacque Brooks' presentation of the knife in a reasonable fashion and the level of force utilized was not excessive under these circumstances.

And further Affiant sayeth not.

/s/ David M. Grossi, Sr.
David M. Grossi, Sr.

Sworn to and subscribed before me, a Notary Public, this 7th day of July, 1993.

/s/ Salvatore J. De Simone
Notary Public

MY COMMISSION EXPIRES:
3-30-94

[SEAL]

SALVATORE J. DE SIMONE
Notary Public in the State of New York
MONROE COUNTY, N. Y.
Commission Expires March 30, 1994

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES Q. BROOKS, ET AL.	)	No. 3:90-0917
VS.	)	JUDGE WISEMAN
	)	JURY DEMAND
WILLIAM SNEED, ET AL.	)	

AFFIDAVIT OF KENNETH PENCE

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

After being first duly sworn, I, Kenneth Pence, do hereby affirm the following:

1. That I have been employed by The Metropolitan Government of Nashville and Davidson County since July 1973. I have worked in various capacities as a police officer, including patrol officer, sergeant, lieutenant, entry unit leader of the Special Weapons & Tactics (SWAT) team. I am currently employed as an instructor at the Metropolitan Police Training Academy. I have been so employed since 1973. I have had extensive training regarding use of force. I have taught use of force classes and firearms training for the last nineteen (19) years. I have been qualified and tested as an expert in these areas by the State and Federal court.

2. I have been a sworn police officer for twenty (20) years.

3. That I specifically instruct or supervise the practical instruction of defensive tactics, use of force, use of deadly force and firearms training for police officer

trainees and for sworn officers during in-service training. The training focuses on the appropriate uses of force, techniques to prevent escalation, the appropriate uses of deadly force and decision making skills regarding the use of force and deadly force. I have obtained the following training in this regard:

B.S. in Engineering, Vanderbilt University
F.B.I. National Academy Graduate 1981
F.B.I. Firearms rating, "Master"
5th Degree Blackbelt Tae Kwon Do (Korean Karate)
PPCT (Pressure Point Control Tactics) Instructor Trainer:
- Tactical Baton
- Impact Weapon
- Pressure Point Control
- Defensive Tactics

ASP (Armament Systems and Procedures)
- Tactical Baton Trainer

F.B.I. Instructor – Development School

4. It is standard police training for officers to be taught to fire until the threat ceases. Metro officers are so trained. They are also trained not to fire until a threat is imminent. Officers are specifically trained regarding the special dangers of confronting assailants armed with edged weapons. Research and training has demonstrated that officers with weapons drawn can be stabbed by assailants who begin running towards the officer from a distance of twenty-one (21) feet.

5. I am familiar with the facts and circumstances which precipitated Officer Sneed shooting Jacques Brooks in self-defense. Based upon her proximity to his vehicle (one to two feet), her refusal to obey his commands to

drop the weapon and get away from the car, her moving closer to the vehicle and passing a ten inch butcher knife from hand to hand, I conclude that Officer Sneed reasonably feared for his safety. I further conclude that he responded properly to the threat she presented, pursuant to his training.

6. Based on Jacques Brooks' proximity to the vehicle, she had the present ability to inflict serious bodily injury upon Officer Sneed by thrusting the knife into the vehicle without raising it or by stabbing into the vehicle with an ice pick type thrust.

7. Upon being faced with identical circumstances, I would have felt sufficiently threatened by Ms. Brooks to employ deadly force against her. Based on her proximity to the car, her state of agitation, her refusal to follow commands and her threatening behavior of passing the knife from hand to hand, I likely would have employed deadly force at that point.

And further Affiant sayeth not.

/s/ Kenneth Pence
Kenneth Pence

Sworn to and subscribed before me, a Notary Public, this 27 day of July, 1993.

/s/ Sharon D. Mayo
Notary Public

MY COMMISSION EXPIRES:
9-21-96

CERTIFICATE OF SERVICE

I certify that a copy of this affidavit has been mailed to Larry Woods and Michele Collins, 121 17th Avenue South, Nashville, TN 37203, and a copy mailed to John M.L. Brown, 2nd Floor, 221 4th Avenue North, Nashville, TN 37219, this 29th day of July, 1993.

/s/ Kennetha Sawyers
Kennetha Sawyers

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES Q. BROOKS, ET AL.	)	No. 3:90-0917
VS.	)	JUDGE WISEMAN
	)	JURY DEMAND
WILLIAM SNEED, ET AL.	)	

AFFIDAVIT OF DR. CHARLES HARLAN

After being duly sworn, I, Dr. Charles Harlan, do hereby affirm the following:

1. That I am a licensed physician in the State of Tennessee. I am employed as the medical examiner and coroner for Metropolitan Nashville and Davidson County, Tennessee.

2. In my capacity as medical examiner, I performed an autopsy on Jacques Q. Brooks on March 14, 1990, in connection with a police related shooting.

3. My findings indicated to a reasonable degree of medical certainty that Ms. Brooks was in a slightly crouched position when initially fired upon. Due to the position of the wounds in her right arm, it is clear that, that arm was raised at least to shoulder level. She was close to the window of the vehicle when struck by the shots fired. I have reviewed the statements of Officer Sneed regarding this encounter. The positions of her wounds are consistent with his description of her positions and actions.

4. Because the position of the gun was stationary and all shots were fired through an open window, I

concluded to a reasonable degree of medical certainty that the position of Jacques Brooks' wounds indicate the following:

a) At some point, likely during the initial shots, Ms. Brooks was facing Officer Sneed. She was in a slightly crouched position.

b) During the series of shots, she spun away while remaining in a standing position. This resulted in the wounds to her back.

5. None of the gun shot wounds suffered by the decedent were instantly fatal. The decedent would not have been instantly incapacitated by one or all of the gunshots. After infliction of the referenced wounds, she could have remained conscious for approximately three to five minutes and would have retained the ability to continue an assault or some other physical activity during her period of consciousness.

6. It is my opinion that based upon the nature of the gunshot wounds, (i.e. perforating wounds to the heart, aorta, right and left lung and the liver), that Ms. Brooks could not have been saved by administration of cardiopulmonary resuscitation immediately following the injuries.

FURTHER, Affiant sayeth not.

/s/ Charles W. Harlan, M.D.
Charles Harlan

STATE OF TENNESSEE
COUNTY OF DAVIDSON

Sworn to and subscribed before me, a Notary Public, this 15th day of July, 1993.

/s/ Roberta K. Rosser
Notary Public

My Commission Expires:

CERTIFICATE

This is to certify that a copy of the foregoing Affidavit has been mailed/delivered to Mr. Larry D. Woods and Ms. Michelle Collins, Woods & Woods, 121 17th Avenue South, Nashville, Tennessee 37203, this 29th day of July, 1993.

/s/ Kennetha Sawyers
Kennetha Sawyers

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES Q. BROOKS, ET AL.	)	
VS.	)	No. 3:90-0917
	)	JUDGE WISEMAN
WILLIAM SNEED, ET AL.	)	JURY DEMAND

AFFIDAVIT OF DR. CHARLES HARLAN

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

I. Dr. Charles Harlan, having been first duly sworn, depose and state the following:

1. That I am the Medical Examiner for the Metropolitan Government of Nashville and Davidson County. I am a licensed physician and forensic pathologist.

2. That I performed the autopsy on the body of Jacques Q. Brooks as the result of a police-related shooting which occurred on March 13, 1990.

3. That Jacques Brooks sustained four perforating wounds. Any one of the four (4) wounds would have been *fatal*.

4. I have concluded that Jacques Brooks spun as she was wounded, causing at least one round to strike her in the back.

5. That Jacques Brooks would have had three to five minutes of consciousness after being shot. During this period, she would have been able to move about, run or perpetrate an assault until she lost consciousness as the result of internal hemorrhage.

6. That the wounds sustained by Jacques Brooks were perforating wounds. Each one separately and in aggregate caused internal hemorrhage. Consequently, I conclude, to a reasonable degree of medical certainty, that each wound taken separately was fatal.

7. Due to the nature and location of the wounds, I am convinced, to a reasonable degree of medical certainty, that Jacques Brooks' life would *not* have been saved, even by the immediate administration of cardio-pulmonary resuscitation (CPR).

Further this Affiant saith not.

/s/ Charles W. Harlan, M.D.
DR. CHARLES HARLAN

Sworn to and subscribed before me this 12th day of August, 1993.

/s/ Mary Ann Nicholson
NOTARY PUBLIC
My Commission Expires: Jan. 27, 1996.

IN THE UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES Q. BROOKS, *et al.*	)	No. 3:90-0917
	)	JUDGE WISEMAN
VS.	)	JURY DEMAND
	)	
WILLIAM SNEED, *et al.*	)	

AFFIDAVIT OF WILLIAM G. SNEED

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

William G. Sneed makes oath as follows:

1. I am a Metropolitan Police Officer, and I have been employed in that capacity since 1984. I am one of the defendants in the captioned case. I have personal knowledge of the facts set out in this affidavit.

2. On March 13, 1990, I was working the evening shift out of the East Patrol Sector. I was armed with a Smith & Wesson Model 5906 semiautomatic pistol, loaded with standard-issue Federal 124-grain ammunition. (This is the same service weapon and ammunition used by the Tennessee Highway patrol.) I had made the transition from revolver to semiautomatic pistol in 1989, following an intensive three-day course taught at the Metro Police Training Academy.

3. At approximately 6:45 p.m. on the aforementioned date, I was dispatched to back up another patrol car on a domestic call at 1613 Haynes Meade Circle.

4. I arrived on the scene before the primary car. I observed two persons, one of whom I later learned was Jackie Brooks, gesturing for me to come in their direction. They were on the left-hand side of the street. I assumed that one of them was the person who had placed the domestic call, and I drove slowly in their direction. As I approached, one of them moved away from the patrol car and the other, Jackie Brooks, walked toward me.

5. I decided that I would go ahead and interview Jackie Brooks, who I believed was the victim in the domestic altercation, and that I would await the other car before dealing with her assailant. I did not observe any weapon in her hand at that time, and I did not get out of my patrol car or take other precautions because I did not then perceive her as a threat to me.

6. As Ms. Brooks approached, I brought my vehicle to a stop in front of the residence which is next door to 1613 Haynes Meade Circle. My engine was running, the transmission was in park, my headlights were on and the window of the driver's side window was completely down. When Ms. Brooks was about even with the driver's window of the patrol car, she made a 180-degree turn and faced in the direction from which she had come. She was standing immediately next to my car door with her hands down, and with her right side turned toward the car. She appeared to be very upset and I observed that she was breathing rapidly. I asked her if she was the person who had called the police. She made no response,

except that she snapped her head in my direction. She placed her hands on her hips and I noticed for the first time that she had a large knife in her left hand. Though she was turned with her left side away from me, I could see the blade of the knife pointing rearward.

7. When I realized that Ms. Brooks had a knife in her hand, I drew my pistol to the ready position, out of her line of sight behind the door of the patrol car. The reason that I did not point the pistol directly at her was that I did not want to escalate the situation. I conversed with her for several seconds, trying to calm her down. Among other things, she several times said, "I'm gonna kill him," which remark I assumed was directed at her assailant in the domestic dispute. I told her that she was not going to kill anybody, and I told her several times to drop the knife and move away from the car. She became increasingly angry and abusive, and she turned to face me. During this part of the conversation, I had turned in my seat so that my left knee and shin were against the driver's door and my back was against the armrest that divides the driver's seat from the passenger's seat. My window was rolled all the way down. The car engine was running, the headlights were on, and the transmission was in "park."

8. After Ms. Brooks turned to face me, she began to shift the knife back and forth from hand to hand. She was approximately one or two feet away from the car door. It became apparent to me that she was not going to comply with my orders to drop the knife or move away from the car, so I leveled my pistol at her and again ordered her to comply with my instructions. She said, "Fuck you, you white motherfucker," and raised the knife in her left hand

to stab me as though she were wielding an ice pick. I pushed myself as far back across the armrest as I could and fired five shots at her, four of which struck her in the torso area. I estimate that these shots were fired in two seconds or less. The entire encounter occurred in less than sixty (60) seconds.

9. I stopped firing when Ms. Brooks disappeared from my field of vision. I exited the car and determined that Ms. Brooks had fallen to the ground beside the patrol car near the left rear wheel. I immediately radioed the dispatcher to say that I had been in a shooting and to request an ambulance and my supervisor.

10. My Response to Ms. Brooks' attack on me was made in self-defense, and it was in accordance with my police training. We are taught that we are justified in using deadly force to defend ourselves when we are in immediate danger of death or serious bodily injury, and I believed that I was in such danger. We are likewise taught that if we are justified in firing shots at an assailant we should to continue to fire until the threat is neutralized. We are specifically instructed about the serious dangers in dealing with persons who are armed with edged weapons. I had never fired my weapon in the line of duty prior to this incident.

And further Affiant sayeth not.

/s/ William G. Sneed
WILLIAM G. SNEED

Sworn to and subscribed before me this 27th day of July, 1993.

/s/ Sharon D. Mayo
NOTARY PUBLIC

My commission expiress [sic]:
9-21-96

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

JACQUES Q. BROOKS (Deceased), Formerly a Citizen and Resident of Davidson County, Tennessee, and HELEN BROOKS, a Citizen and Resident of Davidson County, Tennessee, Individually, and as The Administratrix for the Estate of JACQUES Q. BROOKS, Deceased,	)	
Plaintiffs,	)	
vs.	)	Civil No.
WILLIAM SNEED, Individually and in his capacity as Police Officer for the Metropolitan Government of Nashville and Davidson County, Tennessee, and the Metropolitan Government of Nashville and Davidson County, Tennessee,	)	3:90-0917
Defendants.	)	Volume 1

Deposition of:

WILLIAM G. SNEED

Taken on behalf of the Plaintiffs
July 13, 1993

VOWELL & JENNINGS, INC.
Court Reporting Services
900 American Trust Building
301 Union Street
Nashville, Tennessee 37201
(615) 256-1935

* * *

[p. 26] scene – and I'm telescoping – and Ms. Brooks is standing near your patrol care, when she first approaches, do you drive up to her or does she walk up to you?

A. Both.

Q. When she gets stationary or near your patrol car, are you seated behind the steering wheel at that point?

A. Yes.

Q. When do you change your physical position in the car and what was that change?

A. I changed my position in the car when I observed the knife, and that change was a pivot in the car seat to try to get a little distance from the knife.

Q. A pivot. In other words, you turned on your hips or seat to the right, or to the left?

A. To the left.

Q. You turned to face the driver's side window area.

A. Yes, sir.

Q. Was that window up or down?

A. Down.

Q. All the way down?

* * *

[p. 29] A. Not to my knowledge.

Q. How long had you been driving this particular patrol car that night or that day?

A. I had had it since the day they put it in service.

Q. How long?

A. I'll have to go back and look. It had 30-something thousand miles on it.

Q. You had driven the same car 30-something thousand miles?

A. Yes, sir.

Q. She's at your car, or how far away from the car is she when she stops?

A. When she stops and does what?

Q. When you and she are both stationary, how far away from your car is she?

A. A foot and a half, two feet perhaps.

Q. You pivot in her direction also? You're looking at her?

A. Yes, sir.

Q. Is she already stationary when you see the knife and pivot?

A. Oh, she had already been stationary for quite some time.

Q. And you had some of the conver- [p. 30] sation that I've seen reported in the various statements you've made.

A. Yes, requests to drop the knife and so forth, yes.

Q. You pivot. Do you request her to drop the knife?

A. Yes.

Q. Is that the first thing? What is the first thing you say after you pivot, or first thing you say after you see the knife?

A. "Drop the knife. Back up, get away from the car." Not verbatim, but conversation of that effect. Which continued several seconds.

Q. Conversation by you continued or by both of you?

A. Both.

Q. And she says what?

A. "Fuck you." Numerous times.

Q. Toward you or toward this other person that I understand is out there.

A. To me she said "fuck you" numerous times.

Q. Loudly? Directly? Quietly? what tone of voice? All of those?

[p. 31] MR. BROWN: Excuse me. Let him finish his question before you start answering. I know you're eager to answer but let him finish.

THE WITNESS: All right.

Loud, angry, screaming.

BY MR. WOODS:

Q. And all of this time you remain stationary, having pivoted to look out the car window at her?

A. The vehicle was stationary. No, I was not stationary.

Q. Tell me what you're doing while she is loud and angry.

A. I'm trying to watch that knife, is what I'm doing.

Q. What are you doing physically, though?

A. Physically, well, I had drawn my weapon and I'm looking around trying to find myself a place to go in, between keeping my eye on that knife.

Q. When do you first draw your weapon? Before you pivot or after?

A. I think it was essentially one motion; it was a drawing, and just all more or less [p. 32] in one motion.

Q. Where is your weapon? I'm talking about the evening in question you shot Ms. Brooks, where is your weapon?

A. In my hands.

Q. Where is it before it's in your hands?

A. In my holster.

Q. And where is your holster that evening?

A. On my hip.

Q. Your right hip?

A. Yes, sir.

Q. If you wouldn't mind standing. I think you're wearing it now; right?

A. Wearing what?

Q. A weapon.

A. Yes, sir.

Q. Is it the same weapon?

A. The same weapon, yes, sir.

Q. And you're wearing it now and you're standing up for me, and it is in a holster attached to your belt; is that correct?

A. Yes, sir.

Q. On your right side just above your right hip; is that correct?

[p. 33] A. Yes, sir.

Q. And is that the standard way that you're trained to carry the weapon, that kind of weapon?

A. The standard way would be in a holster on your duty belt on the side which you're more comfortable shooting with, left or right hand.

Q. Are you right-handed or left-handed in terms of shooting?

A. Right-handed.

Q. So in one motion essentially you pivoted and drew your weapon at the same time?

A. Yes, sir.

Q. And you drew it with your right hand?

A. Yes.

Q. Did you hold it in both hands or one hand?

A. Both.

Q. And is that the way Metro had trained you to hold the weapon?

A. Yes, it is.

Q. What weapon is this?

A. It's my –

* * *

[p. 140] discuss with this officer why he may be having difficulties with his work.

The second scenario was –

Q. The second room or board?

A. Yes, sir.

Q. Let me interrupt you and we'll talk about the first one.

So the problem had nothing to do with line activities, involvement with crime or crime scenes or potential problems in the community. The problem strictly had to do with personnel-, management-type situations.

A. Interpersonal skills. Such elusive concepts as communication and interpersonal skills and problem sensing and problem resolution I think were the areas that we were graded on.

Q. And you obviously scored very, very high on this?

A. I did pretty well on the assessment, yes.

Q. Do you know where you ranked on the assessment?

A. Yes, sir.

Q. How high?

[p. 141] A. I think I was 18th.

Q. Out of 300-and-something that signed up originally?

A. Well, no. See, a lot of them didn't get to go because their scores were too low.

Q. You had to score the written exam first?

A. That's correct, and then move to the assessment center phase.

Q. What was the second problem or second situation on the assessment?

A. Three more assessors. The problem, which was consistent with everyone, was a one-on-one problem, one group exercise. The second exercise was with three officers who were – the sergeant who was the candidate was sent to speak with these officers because pay negotiations had fallen out and there was going to be a blue flu and

you had to discuss with these officers why they shouldn't – of course first had to gauge their participation – Are you going to participate or not? Tell them why they shouldn't, explain to them the ramifications if they did, discuss the blue flu sick-out syndrome.

* * *

[p. 187] A. Coasting.

Q. You're moving very slowly at that point.

A. Yes, sir.

Q. And as you are able to see Jacques Brooks, her clothing is messed up; correct?

A. Slightly, yes.

Q. She's somewhat disheveled.

A. Yes.

Q. From which you're thinking and believe at that point in time is that here is the victim who made the call about the domestic disturbance.

A. Yes, sir, that's an assumption I made based on her appearance.

Q. Right. And from her appearance – you did not know her age at that point; correct?

A. Correct.

Q. From her appearance you assumed her to be an older teenager?

A. An adult. I don't recall an assumption of age on my part. I could tell. . . .

Q. You tell me. When you first saw Jacques Brooks up through the time you shot her, what was your belief or knowledge about

* * *

[p. 193] A. No, sir.

Q. – at any time up until the point where you shoot Jacques Brooks?

A. No, sir, I never saw anyone other than the two of them.

Q. Did you hear anyone else other than Jacques Brooks?

A. No, I didn't.

Q. In your second statement, March 26, 1990, you say – I'm going to leave large parts of this out; you can fill in anything you want to. "After viewing some news accounts, two particular statements made at the scene by Jacques Brooks come back to my mind" – I'm not quoting you exactly – "that I didn't include in my original first statement. She said twice, 'I'm going to kill him, I'm going to kill him.' "

Who is the "him" that Jacques Brooks was referring to?

A. I don't know.

Q. And you did not know at the time either.

A. Correct.

Q. As Jacques Brooks walked down the

* * *

[p. 195] A. Yes.

Q. Because you assumed that she was the victim that had placed the disturbance call, and you wanted to talk to her for all the usual standard reasons in that situation; right?

A. Yes.

Q. And part of your thinking, I assume, was assuming she's the victim that made the call, I need to be watching her to make sure no one is chasing her, following her, about to get her, also; right?

A. Yes.

Q. When did you first see the knife?

A. The first time I saw the knife was after we had met and stopped. And when she put her hands on her hips, I saw the knife behind her. She had her hands on her hips (indicating).

Q. Which hand?

A. It was in her left hand originally when I first saw it.

Q. And she had her left hand on her hip?

A. Both hands on her hip.

Q. Left hand on left hip, right hand on

* * *

[p. 200] Q. Your driver's side of your police car, and therefore the driver's side window that is open, immediately on the other side of that driver's side is grass or yard or whatever the terrain is there; correct?

A. Other than the roadway and surface.

Q. That's what I'm asking. Is there roadway on the other side of the driver's side of your car or are you all the way over on the shoulder when Jacques Brooks gets to your car?

A. No, I think there was some amount of shoulder and/or roadway there; otherwise I would have driven off into the grass.

Q. You were still either on the paved part of the road – I'm talking about the driver's side of your patrol car – or on the shoulder when you stopped.

A. Yes, sir.

Q. When you stopped is when she got to your car, I assume.

A. We stopped – I intentionally stopped simultaneously with her. We met and stopped simultaneously.

Q. And when you stopped and she stopped, [p. 201] she's a foot and a half or so away from your driver's side window that you described the other day?

A. Yes, sir.

Q. She's not in front of the car when you stopped and then walks up.

A. That's correct.

Q. So when you stop and she's a foot and a half or so away from your driver's side window, your car is still on the paved part of the road on the driver's side of your car?

A. I believe so, yes.

Q. How much pavement is there between your driver's side of the car and the edge of the pavement where you stop?

A. I don't know.

Q. At any time before you shoot her does Jacques Brooks move closer to your car with her feet? Does she move her entire body any closer to your car?

A. Yes.

Q. Does she do this several times or only once, before you shoot her, start to shoot her?

A. She changed body positions twice, but [p. 202] I think probably only one of those resulted in her being closer to me.

Q. When you say changed body positions, tell me what you mean.

A. Pivoted. Pivoted move.

Q. Turned her torso?

A. Turned her torso and feet and hips to be facing. . . .

Q. Sort of in a restless movement?

A. Speculative. I don't know.

Q. But one time in this change of body positions she was closer to the car and the other time she was further from the car or lateral.

A. She was approximately the same distance on the first movement, and then the second movement would have placed her much closer. When she initiated her stabbing motion she was much closer.

Q. Six inches from the car?

A. Well, that's not a fair – that's not a good question.

Q. You tell me.

A. What part of her body and what part of the car?

[p. 203] Q. Well, the question is: Did she move her feet – and therefore her torso comes with it – closer to the car? And I took it that you told me she moved twice and one of the times she was closer to the car.

A. Yes, sir.

Q. That time that she moved that she wound up closer to your car, how far was she from your car, the driver's side of your car?

A. A foot or less. Less than a foot.

Q. So she starts out about a foot and a half, makes a movement that brings her no closer to your car, and then there's a movement that brings her to within less than a foot from your driver's side window.

A. Yes.

Q. These two movements, do they coincide with anything she's saying? Are they related to anything she's saying?

A. Speculative. I don't think they were.

Let me clarify. I don't know what was going through her mind.

Q. I'm only asking what she said.

A. What she said and the final movement [p. 204] that I just described where she got closer by the initiation of that stabbing action, she got closer to me, and in that action she did make a statement.

Q. What was that statement?

A. "Fuck you, white motherfucker." Which was "fuck you," and "motherfucker" were consistent throughout this discussion we had.

Q. Did she use those terms numerous times? Several times? Do you know how many times?

A. I don't know how many. Several.

Q. How many times did she refer to you as white?

A. Once.

Q. And that's when you just described when you claim that she stabbed at you with the knife?

A. Yes, sir, that was the stabbing – that was the words that accompanied her lunge and stab motion.

Q. And you vividly remember those words?

A. Vividly.

Q. Any other words you vividly remember from Jacques Brooks?

[p. 205] A. Well, after the shooting I remember her saying, "you shot me."

Q. After you had shot five times she said that?

A. After it was all over.

Q. She was on the ground?

A. She was on the way down.

Q. After you fire five times, she says –

A. "You shot me."

Q. And that is while she is falling to the ground after five shots.

A. From my position for listening, hearing that remark, was in the leaned back, in the retreat position that I had been forced to take. And whether she was on the ground or on the way down, I remember her saying it as I was in that position trying to straighten up.

Q. But there's no question that it's after you shoot five times that you hear Jacques Brooks say, "You shot me."

A. No question in my mind.

Q. Did she say anything else after you started shooting?

A. No, not that I heard.

[p. 206] Q. What else do you remember anybody saying? I think you were getting ready to talk about someone else a minute ago.

A. No, I was going to go back and just reiterate that the "Fuck you, motherfucker" was the only response. The only things I heard her say was "Fuck you, motherfucker," other than what I added in that second statement about "I'm going to kill him, I'm going to kill him."

My requests and demands that she drop the knife and/or retreat away from my car were met with, "Fuck you, motherfucker," eight or ten times maybe, something like that.

Q. Is your car engine going?

A. Yes.

Q. Why didn't you must roll the car down 15 or 20 feet?

A. Because the car was in Park.

Q. Why didn't you roll it down the road 15 or 20 feet?

A. Because when I saw her with the knife – when I say the knife in her hand I immediately took up a defensive position and was [p. 207] not seated or positioned in the automobile to safely drive it.

Q. Your defensive position was, as you described earlier, on your back in the front seat.

A. It came to be that. It started out as otherwise, but it ended up being an extreme defensive position away from her. It started out, as we described Tuesday, as turning in the seat. And I couldn't drive.

Q. As you turned, you talked to her, she does not acknowledge what you're saying to her, and you go backwards on your back in the front seat, holding your gun.

A. She does not acknowledge what I say to her. She doesn't comply or accede to my requests and demands. She acknowledged hearing what I said, though.

Q. How?

A. By, as stated in this statement here –

Q. Tell me.

A. "Fuck you, motherfucker." "Fuck you, motherfucker," and "I'm not dropping the knife."

[p. 208] Q. How many times did she say, "I'm not dropping the knife"?

A. I remember that statement twice. I remember the "Fuck you, motherfucker," as a constant conversation.

Q. How many times did she say, "I'm not going to drop the knife"?

A. I remember hearing it twice.

Q. And she referred to you as white once.

A. Yes. sir.

Q. She referred to "fuck" or "motherfucker" several different times, as you've described.

A. Yes, sir.

Q. What else did she say at any point when you could hear her?

A. I believe that's –

Q. Other than "You shot me," what else did she say?

A. "I'm going to kill him, I'm going to kill him."

Q. What else did she say?

A. I don't believe she said anything else that I recall.

[p. 209] Q. So you pivot in your seat, your draw your gun. As you do so, this conversation goes on that you've described, and you go over backwards in the front seat holding the gun on her. Go over on your back in the front seat holding the gun on her.

A. The leaning backwards didn't begin until – as a matter of fact, I was moving and shooting. That first shot was fired from a more upright position.

Q. Seated upright behind the wheel?

A. No.

Q. Pivoted but seated upright?

A. Pivoted and seated more upright, not completely erect. It was leaning back.

Q. 'Where are you when you fire the second shot?

A. In an arc on the way to an extreme leaning position.

Q. Where are you when you fire the third shot?

A. In that arc.

Q. Where are you when you fire the fourth shot?

A. In that arc.

[p. 210] Q. Where were you when you fire the fifth shot?

A. In that same arc.

Q. You fired all five shots before your back came into contact with the front seat of your car?

A. Yes, to my recollection.

Q. No one else knows; right?

A. Apparently.

Q. I mean, there are no witnesses here other than you and Jacques Brooks; right?

A. Apparently not, yes.

Q. Do you know of any witnesses to this, what you're describing right now, other than you and Jacques Brooks?

A. No, I don't.

Q. All this transpires, from the time she gets to your car, the conversation you described, and the actions, in what? 20, 30 seconds?

A. Approximately, yes. Well, I'm sorry.

Q. Go ahead.

A. The entire exchange I was thinking from the transcription of the dispatcher tapes, it probably was less than 20 seconds.

[p. 211] Q. The transcription of the dispatcher tapes, are all these conversations between you and Jacques Brooks transcribed?

A. No, I meant from the time I checked on the scene, which was as I was driving down the street.

Q. I'm not asking you when you checked on the scene. From the time she gets to your car, the driver's side window, until you have finished firing five shots and your back comes into contact with the front seat, I'm saying that is about 20 or 30 seconds?

A. No.

Q. How long is that?

A. That's about 10 or 12 seconds.

Q. How long is it approximately from the time your arrive on the general scene, see Jacques Brooks and another person, until the time you are finished shooting, approximately?

A. Probably 10 more seconds. 10 or 12 more seconds.

Q. Why did you shoot her?

A. Because she tried to stab me.

Q. How many times did she try to stab [p. 212] you?

A. Once that I saw.

Q. The earlier movement where she did not come closer to your car, the earlier body movement, that was not a stabbing movement; she was just moving around a little bit?

A. Yes, sir.

Q. Did you associate anything with that earlier movement? Did she do anything threatening with the earlier movement?

A. Oh, yes.

Q. What?

A. Yes, the earlier movement is when she – to answer that question I'll have to talk you through the entire sequence of her movements.

Q. Tell me what was threatening about the earlier movement and then add everything you want to to that answer.

A. What was threatening about that, for lack of a better term, mutual distance movement was that she was facing into the window of the car, and she passed the knife across in front of her torso and changed hands, and when she changed hands with the [p. 213] knife, it was immediately in front of my face.

Q. She moved the knife form her left hand to her right hand?

A. To her right hand and held it in an upright fashion as my pen is (indicating).

Q. Well, the court reporter can't describe your pen. You're holding your pen by the bottom of the pen with the pen sticking up, straight up in the air, basically.

A. Yes, sir, holding the barrel between my thumb and forefinger.

Q. How long does she hold the knife in front of her and therefore in front of you and your car?

A. it wasn't in front of the car, it was in front of me. It was directly –

Q. Were you not in the car any longer?

A. It wasn't in front of the car where the headlights are; it was at the window.

Q. How long does she hold this knife in front of you and the driver's side of your car?

A. During that passing back and forth of [p. 214] the knife process, it stayed in the position you just described about one or two seconds. Briefly.

Q. Then where does the knife go?

A. Then it goes back to her left hand in the original position in which she held it the first time I saw it.

Q. Then how long is it from then before she makes the second movement where you say she tried to stab you?

A. Two or three seconds.

Q. Does the knife move again, or is the stabbing movement with the left hand?

A. The stabbing movement was with a step – her left foot remained planted. Her right foot took a step toward the car. Simultaneously the knife was raised up over her shoulder area or up over her head, and then when the knife – when all that happened, I don't remember if the knife had started down when I fired or not, but

it was raised and she had stepped and uttered her statement.

Q. When she raises the knife, according to you, up until the point where you fire the first shot, are you seeing the flat of the [p. 215] blade or the edge of the blade?

A. Apparently I saw the flat of the blade because I saw a reflection, which I don't believe I could see off the edge.

Q. Once you start firing, as we discussed the other day, you're really seeing that glare or glint or reflection because of the flashbulb effect; correct?

A. Of the knife, off the knife blade, yes.

Q. So as that point do you really know whether it's the flat or the edge? You just really know it's the reflection off the knife.

A. I didn't really know if it was the flat or the edge; I knew it was the knife.

Q. How many times did Jacques Brooks, according to you, move the knife from her left hand to her right hand and back to her left hand?

A. Once.

Q. And that once is the sequence you described just a minute ago.

A. Started in her left, went to her right, came back to her left, then the

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[p. 218] that I'm aware of. It certainly –

Q. You were scared.

A. Terrified. Scared is not a fair statement. Terrified is better.

Q. How tall was Jacques Brooks?

A. I don't recall.

Q. In comparison to you, how tall was she? Would she have come up to your shoulder?

A. I don't know if she was five feet tall or five feet eight. I don't know.

Q. How tall are you, Mr. Sneed?

A. Six feet.

Q. And you were six feet when this happened, I assume.

A. Yes, sir.

Q. How much did you weigh when this happened?

A. About 195, 198, something like that.

Q. Is that about what you weigh now?

A. Yes, sir.

Q. On the evening that you shot and killed Jacques Brooks you were not under any physical disability or emotional problem, were you?

* * *

[p. 225] A. No.

Q. What are you saying then?

A. I'm saying that I could not drive the automobile because I had pivoted and had contorted my legs in the seat and had a gun in my hands and was in a leaning position. And I was nowhere near the steering wheel or the foot controls and I couldn't have driven that car a foot much less a hundred feet as you suggested.

Q. You confused me, Mr. Sneed. When I asked you earlier if your feet were up against the side of the car you told me no.

Where were your feet?

A. They're in the – one of them is in the floorboard.

Q. By floorboard you mean the well under the steering wheel?

A. I mean the floor. I don't mean under the steering wheel. They were in the floor, and one of them was against the door.

Q. The floor where in the car? What part of the floor in the car? In front of the driver's seat? That part of the floor?

A. In front of the driver's seat adjacent [p. 226] to the driver's door.

Q. What is the length of your leg or your inseam, do you know?

A. 32.

Q. And you're saying you couldn't reach the gas pedal with your leg?

A. Oh, I definitely could not the way I was contorted; that's correct.

Q. Why did you contort yourself in such a way as to do that?

A. To do what?

Q. To be unable to reach and operate the car?

A. To get away from that knife, to allow myself. . . .

Q. And you did not consider getting away from the knife by rolling or driving the car down the road.

A. Correct.

Q. You only considered, "All right, I'll contort myself and draw my gun."

A. Yes.

Q. What other weapons or other sources of protection were available to you there? If you had been able to use them, what other

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[p. 234] baton. But I don't specifically remember any protective clothing.

MR. BROWN: We about ready to take five?

MR. WOODS: Sure, any time you want to.

(Brief break observed.)

MR. WOODS: John, tell us what the names were just so I'll have a copy of it.

MR. BROWN: Mr. Woods, in talking to Officer Sneed about a question you asked him on Tuesday about

training academy staff, he has – I think he told you at the time that he might not be remembering some of them. He's told me Lieutenant Joe McEwen who is retired, and Lieutenant Wade Huntley who is retired. Is that right, Officer Sneed?

THE WITNESS: Yes, it is.

BY MR. WOODS:

Q. Mr. Sneed, another matter of clarification that came up during the break, from your attorneys: I had asked you a series of questions about your pivoting in the car, drawing the gun, and going, I'll call it [p. 235] backwards.

And you answered by when you were firing as you went backward, and you were talking about your back coming in contact with the front seat. And actually what we're talking about is your back coming in contact with an armrest in the middle of the front seat; correct?

A. Yes, sir, that's correct.

Q. About how high off the seat is that armrest? Three or four inches?

A. Yes, sir, approximately.

Q. And in that series of questions you said you were firing Shots 2 through 5 as your back was arching toward the front seat. I took that to mean your back was still in the air, not in contact with that armrest yet. Is that correct?

A. Well, as best I recall, yes.

Q. I just wanted to make sure the armrest didn't make a difference there.

A. Well, the armrest – the armrest was near my –

Q. The small of your back?

A. Waistline, actually. So it was just a [p. 236] pivot point of the arc. As I was leaning away it was against the small of my back.

Q. So you pivoted back toward the armrest as you turned and pivoted, and then were arching across the armrest?

A. No, sir.

Q. I misunderstood. Tell me.

A. I wasn't clear. As I turned and pivoted in the car seat, as we've discussed several times, I turned – from facing in a normal driving position, I turned approximately 90 degrees which would have been to my left facing out the driver's side window, which would have placed the armrest of the seat behind me, parallel with my shoulders. And as I leaned to escape the knife attack, at some point during that lean I contacted the small of my back with that armrest.

Q. So when you said you were arching as you shot, is the back of your waist already in contact with the armrest when you're shooting, or do you know?

A. At some point I think it did but I don't know specifically when.

Q. I want to be sure you told me every-

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[p. 246] your automobile?

A. Not that I'm aware of.

Q. Have you told me – and I'm not sure about this so you tell me.

Have you told me everything you said to Jacques Brooks, or said to anyone, at the scene?

A. I've told you everything that I – I think the way I phrased it was that I remember the content and the spirit of what I was saying much more than I do the specific words. For example, I don't know if I said, "Lady, drop the knife," or "Ma'am, drop the knife," but I communicated drop the knife.

Q. Do you know how many times you said it?

A. I would say eight or ten.

Q. Did you say anything else other than "Drop the knife"?

A. Yes, I did.

Q. What?

A. "Back up," "Get away from the car, back up."

Q. Did you say anything else?

A. Not that I recall.

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[p. 249] but not in a police car. Because in our police car there's a stack unit, modular-type unit mounted on the transmission hump in front of the front seat, between the

front seat and the dash, which has the radio equipment and siren amplifier and things like that, and that would have prohibited a tactical, or tactically sound withdrawal from the passenger side.

Q. Why – go ahead. I didn't mean to cut you off.

A. Plus the aforementioned armrest would have prevented me from tactically safely going out the other side. I would have had to turn my back and crawl, and had she chosen to renew her attack I wouldn't have even known she was coming. So therefore I couldn't turn my back and crawl out the passenger side; I had to go out the driver's side.

Q. You can't scoot over that three- or four-inch armrest?

A. Not with that stack unit there.

Q. The stack unit is not on the seat.

A. No, it's in the floor.

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[p. 265] A. I don't remember if I was using my mobile or portable. I don't really remember.

Q. When is the first time you remember getting out of your patrol car?

A. I think I got out of the patrol car after I initially reported that I had been involved in a shooting, after the initial transmission to the dispatcher. I think that's when I exited the car.

Q. And would that be before the dispatch conversation where you have to clarify "No, it was not me that was shot but was someone else"?

A. Yes, that would have been the first conversation.

Q. And what is your purpose in getting out of the patrol car?

A. To check on the injuries that Ms. Brooks had sustained.

Q. How did you check on those injuries?

A. Walked over to her, and as best I could, leaned down and checked her wounds. And I was having to be very careful because of the presence of the knife still in her hand, so I couldn't do a detailed – I'm not [p. 266] medically trained to do so, first of all. I couldn't make a very thorough triage or analysis of her injuries but I could examine her from a safe distance.

Q. From your observation was she alive at that point?

A. Yes, sir.

Q. Why do you say that?

A. She was breathing.

Q. And did you do anything to assist her? Let me jump forward.

A. I called an ambulance.

Q. Right. At some point EMT or the ambulance arrives. How long is that, approximately?

A. Two or three minutes.

Q. In between the time that you get out of the patrol car and the time the ambulance arrives, other than calling for assistance and help, do you do anything else to assist Jacques Brooks?

A. Other than calling for help.

Q. Right. Other than that, do you do anything else?

A. Other than examining her injuries and [p. 267] determining that she was injured, no, I didn't do any hands-on type activities, no.

Q. And the examination was just visual. You did not move her, you did not touch her.

A. No, I couldn't get that close to her; she had a knife.

Q. Did you have your baton at this point?

A. No, I didn't bring it out.

Q. Why not?

A. Didn't need it.

Q. Because you would shoot her if there was another problem?

A. If necessary.

Q. You had your gun out.

A. If necessary.

Q. You had your gun out this entire time?

A. Yes. It was in my hand but not aimed or pointed at anyone.

Q. It was out of your holster in your hand.

A. Yes, it was.

Q. And you had what, 11 rounds, cartridges, left at that point?

A. I think I had 10 left.

Q. How many wounds could you observe

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[p. 312] Q. Tell me again then.

A. I'm not very well-versed in financial terminology. When I applied for a loan I had to give bank account numbers, I had to estimate my net worth as far as furniture and clothing, et cetera, and I think they determined approximately $200,000. It may have been –

Q. In other words, you worked with a bank officer, a loan officer, and filled out one of their usual kind of forms, and based on that, you and he or you and she arrived at a figure of a net worth of about 200,000.

A. Whether that was premortgage or post mortgage, I think before the mortgage that was the balance.

Q. Let's go back to the shooting and death of Jacques Brooks.

At that time you had no knowledge and did not observe any facts that told you anything about Jacques Brooks' mental condition or mental capacity; correct?

A. Correct.

Q. She did not say anything at the scene that would have given you any insight or